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National Defense

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32

PARTS 630 TO 699
Revised as of July 1, 1985

822-005-00105-1

ORIGINAL

NOTE: No amendments to this volume were promulgated during the period July 1, 1984 through June 30, 1985. The CFR volume issued as of July 1, 1984 should be retained.

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PARTS 630 TO 699

Revised as of July 1, 1984

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thus: 32 CFR 630.1

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The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

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Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16	as of January 1
Title 17 through Title 27	as of April 1
Title 28 through Title 41	as of July 1
Title 42 through Title 50	as of October 1

The appropriate revision date is printed on the cover of each volume.

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The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

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JOHN E. BYRNE,
Director,
Office of the Federal Register.

July 2, 1984.

THIS TITLE

Title 32—NATIONAL DEFENSE is composed of ten volumes. The parts in these volumes are arranged in the following order: Parts 1-39 (Volumes I, II and III), Parts 40-189, Parts 190-399, Parts 400-629, Parts 630-699, Parts 700-799, Parts 800-999, and Part 1000 to End. The contents of these volumes represent all current regulations codified under this title of the CFR as of July 1, 1984.

The Defense Acquisition Regulations (DAR) comprise the first 3 volumes of Title 32. For the DARs, the Code of Federal Regulations numbering system has been waived. For an explanation, see the Explanation pages in Parts 1-39, Volumes I, II and III. A subject index for all the DARs appears in Volume III.

The current regulations issued by the Department of the Army appear in the volumes containing Parts 400-629 and Parts 630-699; those issued by the Department of the Navy appear in the volume containing Parts 700-799, and those issued by the Department of the Air Force appear in the two volumes containing Parts 800 to End.

For this volume Doris M. O'Keefe was Chief Editor. The Code of Federal Regulations publication program is under the direction of Martha B. Girard, assisted by Robert E. Jordan

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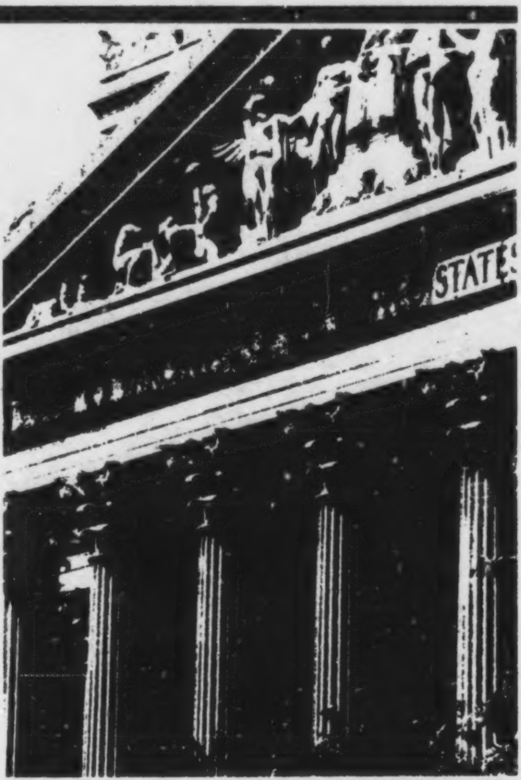

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Veterans' Administration: See Pensions, Bonuses, and Veterans' Relief, 38 CFR, Chapter I.

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Abbreviations: The following abbreviations are used in this chapter: AGCT=*Army General Classification Test.* AGO=*Adjutant General's Office.* APP=*Army Procurement Procedure.* AR=*Army Regulations.* ASPR=*Armed Services Procurement Regulations.* ATC=*Air Transport Command.* A. W.=*Articles of War.* AWOL=*Absent Without Leave.* Comp. Gen.=*Comptroller General.* OCF=*Office, Chief of Finance.* ROTC=*Reserve Officer's Training Corps.* ZI=*Zone of Interior.*

SUBCHAPTER I—LAW ENFORCEMENT AND CRIMINAL INVESTIGATIONS

PART 630—MILITARY ABSENTEE AND DESERTER APPREHENSION

Sec.

630.1 Policy.
630.2 Civil detention facilities.
630.3 Payment of reward or reimbursement for actual expenses.
630.4 Detainer.

AUTHORITY: 10 U.S.C. 801 through 940; Manual for Courts-Martial, U.S. 1969 (Revised Edition) as amended; (Sec. 709, Pub. L. 96-154, Defense Appropriation Act).

SOURCE: 44 FR 6566, Jan. 29, 1980 and 45 FR 25060, Apr. 14, 1980 unless otherwise noted.

§ 630.1 Policy.

(a) Military law enforcement officials may communicate directly with other military or civilian law enforcement authorities to expedite returning deserters to military control under the provisions of (Chapter 3, Army Regulation (AR) 190-9) and to insure proper use of the National Crime Information Center (NCIC) in accordance with AR 190-27.

(b) *Authority to apprehend in the United States.* (1) Any civil officer having authority to apprehend offenders under the laws of the United States, or of a State, Territory, Commonwealth, possession, or the District of Columbia, may summarily apprehend deserters from the US Armed Forces and deliver them into the custody of military officials. Receipt of Department of Defense (DD) Form 553 (Absentee Wanted by the Armed Forces) and a corresponding Army entry in the Federal Bureau of Investigation's (FBI) NCIC Wanted Person File, an Army entry in NCIC standing alone, or oral notification from military or Federal law enforcement officials that the person to be apprehended has been declared a deserter and that his/her return to military control is desired, constitutes a request for civilian apprehension support.

(2) Civil law enforcement authorities may apprehend absentees (AWOL's—absent without leave) when requested to do so by military authorities.

(3) Any person authorized under regulations governing the armed forces to apprehend persons subject to the Uniform Code of Military Justice (UCMJ) or to trial thereunder may do so upon reasonable belief that an offense has been committed and that the person to be apprehended committed it. Authority to apprehend military absentees and deserters is not restricted to the confines of military installations or activities.

(c) *Apprehension of absentees and deserters who claim sanctuary.* (1) In cases where a number of offenders are involved, some of whom are absent without leave (AWOL) and some deserters (dropped from rolls—DFR), responsibility remains with the military services. However, maximum cooperation will be solicited from local or State civil law enforcement authorities. The FBI will not be requested to support the apprehension action. If local or State civil law enforcement authorities decline to support apprehension, all facts will be reported to HQDA (DAPE-HRE), Washington, DC 20310, via priority message and acknowledged before apprehension is attempted by military personnel.

(2) In cases where all persons involved are deserters and FBI was furnished notice of desertion under aggravated circumstances by United States Army Deserter Information Point (USADIP) and/or the other military services, the FBI will assume jurisdiction and effect apprehension.

(3) Final responsibility for apprehension of military absentees and deserters rests with military authorities.

(d) Absentees and deserters normally may be delivered for processing to the nearest major military installation (excluding, under normal circumstances, separate medical installations) manned by active duty personnel.

(1) Commanders will accept custody and transfer such individuals to an organization or installation designated to administer returning absentees and deserters. Exception:

(i) Army personnel returned to military custody within Military District of Washington (MDW) (excluding MDW personnel) will be delivered to Fort George G. Meade, Maryland, for further administrative processing in accordance with AR 630-10.

(ii) Absentees and deserters from other services will be transferred to an installation of their service.

(2) Any further disposition of returned Army personnel to specific units will comply with AR 630-10 or AR 600-62 as directed by HQDA and/or in the best interests of the Army as judged by the installation commander.

(3) Personnel Control Facility (PCF) commanders are responsible for supervising and coordinating processing and disposition of Army members confined by civilian authorities. The commander, law enforcement activity, area provost marshal or security officer and PCF commanders will coordinate closely to ensure the status of Army members in hands of civilian authorities is monitored.

(e) Military police terminate ongoing military and civil police (including FBI) apprehension efforts in accordance with paragraph 3-3 of AR 190-9 when an Army member is returned to military custody or when located in civilian custody.

(f) Every practical effort will be made to apprehend absentees and deserters as expeditiously as possible. To achieve this:

(1) Commander, law enforcement activity, installation provost marshal, or security officer will vigorously investigate the facts and circumstances surrounding absences, initiate local apprehension actions, and expedite notification procedures.

(2) New information on the whereabouts of absentees or deserters will be given to the installation provost marshal. The provost marshal will notify military or civilian authorities requesting their assistance returning the member to military control.

(3) The commander, law enforcement activity, provost marshal or security officer will establish and maintain liaison and coordination with military and civil law enforcement authorities. Provost marshals will encourage active efforts by civil authorities returning absentees and deserters to military control.

(4) Commanders will publicize apprehension programs to deter potential absentees. Absentee prevention is discussed in Department of the Army (DA) Pamphlet 600-14.

(5) Headquarters, Department of the Army, will jointly evaluate results of the deserter apprehension program, with the other military services, Defense Investigative Service, Defense General Counsel, and Office Assistance Secretary of Defense (Manpower, Reserve Affairs and Logistics) and recommend necessary changes. Meetings will be held annually, hosted in order of service seniority, beginning calendar year (CY) 1980. The host service will keep minutes and provide them to agencies taking part.

(g) Joint-service cooperation returning absentees and deserters to service control is encouraged. If appropriate, Interservice Support Agreements (ISSA) may be developed at the local command level to facilitate joint-service efforts. These arrangements should coincide with existing operational functions of a military service. These arrangements should not create a new function (e.g., Armed Forces Police Detachments), requiring excessive overhead support. (Forward copies of ISSAs covering apprehension support to HQDA (DAPE-HRE), Washington, DC 20310.)

(h) Upon publication of AR 190-9, US Army will authorize use of the DD Form 553 (Absentee Wanted by the Armed Forces) and DD Form 616 (Report of Return of Absentee) when current supplies of the related DA Forms 3835 and 3836 are exhausted.

§ 630.2 Civil detention facilities.

(a) Use of civil detention facilities.

(1) When necessary, civil detention facilities may be temporarily used to detain absentees, deserters, or escaped military prisoners. Contracts providing for payment only of actual costs incident to detention may be made with State or county jails that have been approved by the Bureau of Prisons, Department of Justice. Obtain information about approved facilities from the nearest United States Marshal.

(2) The Defense Acquisition Regulation and the Army Procurement Procedures will govern these contracts.

(3) Contracts will contain the standards of treatment of military prisoners set forth in AR 190-47.

(4) Military detainees will receive the same standard of care that they would receive in a military or Federal institution. No cruel or unusual punishment will be permitted.

(5) If institution officials think that a military detainee cannot be restrained by reasonable methods, or if the detainee escapes, they should report this information promptly to military authorities with whom they have a contract.

(b) Costs of detention in civil detention facilities.

(1) Civil authorities may be reimbursed according to contracts for temporary detention after military authorities have assumed custody. This does not authorize payment for subsistence and detention for the same period for which the reward was authorized. It does authorize payment from the date further detention was requested. This does not preclude the payment of reward or reimbursement for reasonable expenses for periods before delivery to military custody. Detained officers receiving basic allowance for subsistence (BAS) will be charged the cost of subsistence.

(2) Costs incurred by Army authorities for detention under an Army contract will be paid to the civil detention facilities. Any reimbursement to Army by the other services will be by prior agreement between the commanders concerned.

§ 630.3 Payment of reward or reimbursement for actual expenses.

(a) *Payment.* Payment of a reward or reimbursement for actual expenses to officials or agencies taking part in the Army apprehension program is authorized as indicated below:

(1) Payment of a reward ($75) for apprehension or acceptance of surrender of a military offender and delivering him/her to a military installation which has facilities to receive and process offenders.

(2) Payment of a reward ($50) for apprehension or acceptance of surrender of a military offender and detaining him/her in civil custody until military officials assume custody.

(3) Reimbursement for actual expenses, not to exceed $75 in any one case, in lieu of reward, or when conditions for payment of reward cannot be met.

(b) *Offer of reward.* Payment is authorized when a reward has been offered. Notification before apprehension or surrender, that individual is wanted by the Armed Forces, shall constitute an offer of reward. The notice may be oral or written, from a military or Federal law enforcement official, or it may be an NCIC check as described on DD Form 553.

(c) *Reimbursement option.* Reimbursement for actual expenses is authorized when:

(1) Reward has not been offered.

(2) Reimbursement is requested in lieu of reward.

(d) *To whom payable.* Payment of reward or reimbursement for actual expenses is payable to any eligible person or agency performing the service. Foreign nationals are eligible when participation is within the meaning and intent of Chapter 5 of AR 190-9.

(e) *To whom not payable.* A reward or reimbursement is not authorized to armed service members, salaried officers or employees of the Federal Government, or to lawyers on whose advice an offender surrenders.

(f) *Dual payment.* Dual payment (both reward and reimbursement) relating to one offense is prohibited.

(g) *Reward payment.* A reward will be made to one person or agency who detains or delivers the offender to military custody. The finance and accounting officer designating by the major Army commander concerned will pay the claimant. If two or more persons are entitled to reward, the payee may divide the payment among participants. Payment for apprehension effected jointly by an eligible and ineligible person or agency may be claimed by the eligible person/agency. Ineligible persons may not share in payments.

(h) *Reimbursement payment.* Reimbursement of actual expenses may be made to more than one eligible person or agency. However, total reimbursement for return to military control of an offender may not exceed $75 for each occurrence.

(i) *Official transportation/personal services.* Payment will not be made for:

(1) Transportation performed by official vehicle.

(2) Personal services of the claimant.

(3) Apprehension and detention not followed by return to military custody.

(j) *Documentation.* Payment of reward or reimbursement for expenses will be made by processing Standard Form 1034 (Public Voucher for Purchase and Services Other Than Personal). The following information and documentation will be shown on SF 1034 or supporting documents:

(1) Name, social security number, and station of military offender (DD Form 553 or 616).

(2) Date, place of arrest, and place of delivery to military custody (DD Form 616).

(3) Signed statement by claimant that he/she, or agency he/she represents, qualifies for payment of reward (SF1034 item).

(4) Signed statement by responsible military authority that:

(i) Delivery was made to a military installation with facilities to receive and process offenders (DA Form 4187).

(ii) Military custody was assumed away from a regular military installation.

(5) Reimbursement for expenses in lieu of reward will be made as above; except that statement in paragraph (j)(3) of this section is not required. An itemized list of actual expenses incurred by claimant is required. Items may include any reasonable expense deemed justifiable and reimbursable by certifying officer.

(6) Supporting Army forms referenced in paragraphs (j)(1), (2), (3) and (4) of this section will be furnished claimants to support payment.

§ 630.4 Detainer.

(a) *General.* (1) A detainer should be placed whenever an Army member is being held for further disposition by civilian authorities. Military police or other military authorities may initiate detainees. When a detainer was placed and the subject's return to military custody is no longer desired (e.g., discharged), the detainers must be removed promptly on behalf of the commander. The purpose of filing a detainer is to—

(i) Officially advise civil authorities that a member of the Army is in their custody, and that military authorities want to assume custody on his/her release.

(ii) Request that military authorities be kept advised of further disposition by civil authority.

(iii) Permit military authorities to monitor the member's military status while he/she remains in civil custody.

(2) When military police file a detainer with civil authorities, a copy of the detainer will be given immediately, to the appropriate installation coordinating agent. The coordinating agent will—

(i) Monitor the member's military status in accordance with AR 630-10 and AR 600-62.

(ii) Monitor subsequent movement and personnel actions of the detained person.

(iii) Advise military police, including USADIP, to cease all apprehension actions.

(iv) Designate a commander to monitor the detention. The commander will assume custody when the member is released by civil authorities; and will complete any necessary personnel actions while the member is in civil custody.

(v) Notify, in accordance with AR 630-10, the commander of the unit from which the member is absent.

(vi) Arrange return to a military installation when release by civil authorities is imminent.

(vii) Advise civil authorities in writing when the member's military status changes and/or when the member's return to military custody is no longer desired, stating the reasons.

(3) Detainers will be cancelled when the member is released to military custody; however, if civil authorities specifically request official notification, the installation coordinating agent will comply with paragraph (a)(2)(vii) of this section.

(b) *Detainer forms.* The detainer format (Figure 1) may be reproduced locally and completed in pen and ink when necessary. A copy must be furnished to the installation or area coordinating agent for appropriate action in accordance with AR 630-10.

LETTERHEAD

Office Symbol

Subject: Army Member Detained by Civil Authorities.

To: Civil agency detaining the Army member.

1. This is to advise you that the individual identified below is a member of the U.S. Army and that military authorities desire to take custody on release from your jurisdiction.

Grade, Name, SSN ——————————
Unit ——————————————————
——————————————————————

Appropriate military authorities were advised of subject's detention as follows:

Date Detained ——————————————
Reason ————————————————————
Probable Release Date ——————————
Other ————————————————————
——————————————————————

2. The military authority indicated below will coordinate the member's return to military custody; monitor military status while in your custody; and advise you of any change in military status which would negate the requirement for return to military custody.

Coordinating agent ————————————
Address ——————————————————
Telephone No. ———————————————
——————————————————————

Other military point of contact: ————phone ——.

3. Request notification of release sufficiently in advance to permit coordination of military pick-up. Notification may be in writing or by telephone, collect if necessary. Phone number ————.

4. The Department of the Army gratefully acknowledges your cooperation in this matter.

——————————————————————

——————————————————————

——————————————————————

——————————————————————

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Figure 1

PART 631—ARMED FORCES DISCIPLINARY CONTROL BOARDS AND OFF-INSTALLATION MILITARY ENFORCEMENT SERVICES

Subpart A—General

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631.1 Purpose.
631.2 Applicability.
631.3 Supervision.
631.4 Exceptions.

Subpart B—Armed Forces Disciplinary Control Boards

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631.6 Responsibilities.
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631.21 Joint law enforcement operations.

APPENDIX A—CIVIL AGENCIES
APPENDIX B—ARMED FORCES DISCIPLINARY CONTROL BOARD PROCEDURES GUIDE

AUTHORITY: 10 U.S.C. 3012(b)(1)(g).

SOURCE: 47 FR 8350, Feb. 26, 1982, unless otherwise noted.

Subpart A—General

§ 631.1 Purpose.

This regulation prescribes uniform policies and procedures for the establishment, operation, and coordination of the following:

(a) Armed Forces Disciplinary Control Boards (AFDCB).

(b) Off-installation military enforcement activities.

(c) Joint law enforcement operations.

§ 631.2 Applicability.

This regulation applies to the following:

(a) Active US Armed Forces personnel wherever they are stationed. Commanders in oversea areas are authorized to deviate from the policy in this regulation if required by local conditions, treaties, agreements, and other arrangements with foreign governments and allied forces. Subparts C and D are not applicable to the US Navy.

(b) Reserve personnel only when they are performing Federal duties or engaging in any activity directly related to the performance of a Federal duty or function.

(c) National Guard personnel only when called or ordered to active duty in Federal status.

§ 631.3 Supervision.

(a) The following will jointly develop and have staff supervision over AFDCB policies and the conduct of off-installation military enforcement activities:

(1) The Deputy Chief of Staff for Personnel, Headquarters, Department of the Army.

(2) Chief of Naval Personnel (PERS-84).

(3) Commandant of the Marine Corps.

(4) Chief of Security Police, Air Force Office of Security Police, Department of the Air Force.

(5) Commandant of the Coast Guard.

(b) The above will also be responsible to standardize AFDCB policies and procedures as well as to coordinate and maintain liaison with interested staff agencies and other military and civil agencies.

§ 631.4 Exceptions.

Requests for exceptions to policies contained in this regulation will be forwarded to HQDA(DAPE-HRE-PO), WASH, DC 20310.

Subpart B—Armed Forces Disciplinary Control Boards

§ 631.5 General.

(a) Armed Forces Disciplinary Control Boards (AFDCBs) may be established by installation, base, or station commanders. The mission of AFDCBs is as follows:

(1) Advise and make recommendations to commanders on matters concerning the elimination of crime or other conditions which may negatively affect the health, safety, morals, welfare, morale, or discipline of Armed Forces personnel.

(2) Insure the establishment and maintenance of the highest degree of liaison and coordination between military commands and appropriate civil authorities.

(b) Where installations of two or more military Services are located or which are frequented by personnel of two or more Services, there will be joint Service participation in any AFDCB. In such cases, the commander of the Service with the greatest number of troops will serve as the "sponsoring commander" of the board. When there is joint participation in AFDCBs, written agreements will be executed by the respective Service installation commanders. These agreements will designate the sponsoring commander and delineate the joint Service participation.

§ 631.6 Responsibilities.

(a) Major Army commanders, Navy commanders, Marine Corps commanders, Air Force commanders, and Coast Guard commanders will—

(1) Monitor the establishment of and participation in AFDCBs by subordinate commands.

(2) Encourage subordinate commanders to participate in joint Service boards where appropriate.

(3) Resolve differences among subordinate commanders in regard to board areas of responsibility and the designation of sponsoring commanders.

(4) Evaluate board recommendations and actions from subordinate sponsoring commanders.

(5) Forward to HQDA (DAPE-HRE), WASH, DC 20310, reports that require

Service headquarters action to accomplish the following:

(i) Correct situations which would adversely affect the health, safety, morals, welfare, morale, or discipline of Armed Forces personnel.

(ii) Surface positive programs having widespread applicability.

(6) Insure procedures are established to notify the responsible individuals to insure that off-limits restrictions are made known and applicable to all Armed Forces personnel who may frequent the area in question. These would be off-limits restrictions approved and so declared by subordinate sponsoring commanders.

(7) Insure that subordinate commanders assess the availability of drug abuse paraphernalia in the vicinity of DOD installations through their AFDCBs in accordance with DOD Directive 1010.4, Alcohol and Drug Abuse by DOD Personnel. Drug abuse paraphernalia is defined as all equipment, products, and materials of any kind that are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of the Controlled Substances Act.

(b) In each AFDCB area, the commander of the installation with the largest base population will be designated the AFDCB sponsoring commanders. Sponsoring commanders will provide administrative support, as shown below, for the AFDCB programs.

(1) Promulgate implementing directives and call meetings of the board.

(2) Provide a recorder for the board.

(3) Provide copies of the minutes of the meetings of the board to—

(i) Other Service commanders who provide board representatives.

(ii) BUPERS (for Navy only).

(iii) Other AFDCBs as appropriate.

(4) Approve or disapprove the minutes and recommendations of the board and make appropriate distribution, as required.

(5) Publish lists of "off-limits" establishments and areas.

(6) Insure notification to the responsible individuals of any unfavorable actions being contemplated or taken regarding their establishments in accordance with Appendix B.

(7) Distribute all pertinent information to the following:

(i) All units within their jurisdictional area.

(ii) Units stationed in other areas whose personnel frequently visit their jurisdictional area.

(c) (For Army only). Commanders of Army installations depicted in Map 13, AR 5-9, are responsible for coordinating activities of AFDCB in their areas. They may serve as sponsoring commanders or participate as members of Joint Service Boards. They may approve the establishment of separate AFDCB for Army installations within their area when it is in the best interest of the Army to do so. Changes in AFDCB areas of responsibility may be approved by MACOMs of installations concerned.

(d) (For Army only). The Commander, US Army Health Services Command will—

(1) Assure that subordinate commanders provide *one* of the following to sit as a member of each established board—

(i) A Medical Corps officer.

(ii) A health and environment oriented Medical Service Corps (MSC) officer of the Army Medical Department (AMEDD).

(2) Encourage subordinate commanders to—

(i) Maintain liaison with other governmental and civilian health agencies to detect unsafe or unhealthy conditions within the geographic area of each supported board.

(ii) Advise the board of conditions which adversely affect Armed Forces personnel.

§ 631.7 Composition of boards.

(a) Each board shall, as a minimum, consist of representatives from the following functional areas:

(1) Law enforcement.

(2) Legal.

(3) Health and environment.

(4) Public affairs.

(5) Equal opportunity.

(6) Safety.

(7) Chaplains.

(8) Alcohol and drug abuse.

(9) Personnel and community activities.

(b) Sponsoring commanders will determine, by position, which board members will be designated as voting members. Such designations will be included in the written agreements establishing the boards.

(c) Normally the sponsoring commander will designate a member of his staff as the board President.

§ 631.8 Civil agencies.

(a) Civil agencies or individuals may be invited to board meetings as observers or witnesses in jurisdictions where they have knowledge of problems in the board's area of interest. These would be civil agencies or individuals concerned with law enforcement, public health, welfare, consumer affairs, and the safeguarding of morals.

(b) Boards should be used to establish and maintain liaison between installations and civil agencies. A recommended method is to mail announcements and summaries of the results of board meetings to appropriate civil agencies. These agencies include, but are not limited to, those found in Appendix A.

§ 631.9 Duties and functions of boards.

The AFDCBs will—

(a) Meet in session as prescribed by the AFDCB Procedures Guide in appendix B.

(b) Receive and take appropriate action on reports of conditions in their jurisdictional areas relating to any of the following:

(1) Lack of discipline.

(2) Prostitution.

(3) Venereal disease.

(4) Liquor violations.

(5) Racial and other discriminatory practices.

(6) Alcohol and drug abuse.

(7) Drug abuse paraphernalia.

(8) Disorder.

(9) Illicit gambling.

(10) Unfair commercial or consumer practices.

(11) Other undesirable conditions that may adversely affect members of the military or their families.

(c) Report the following to all major commanders in the board's area of jurisdiction:

(1) Any conditions cited in paragraph (b) of this section.

(2) The board's recommended action as approved by the board's sponsoring commander.

(d) Conduct active liaison with appropriate civil authorities on problems or adverse conditions existing in the board's area of interest.

(e) Make recommendations to commanders in the board's area of jurisdiction concerning off-installation procedures to prevent or control undesirable conditions.

§ 631.10 Administration.

(a) Commanders are authorized to acquire, report, process, and store information concerning persons and organizations, whether or not affiliated with the Department of Defense (DOD) (AR 380-13), which:

(1) Adversely affects the health, morals, welfare, morale, or discipline of Armed Forces personnel regardless of status.

(2) Describes crime conducive conditions of which Armed Forces personnel may become victims.

(b) Information described in paragraph (a) of this section may be filed by organization; however, it will not be retrievable on the basis of individual personal identification date, e.g., SSN, name, or address. The information should be retained only as long as the described conditions or threat to the welfare of Armed Forces personnel continues to exist.

(c) Boards will function under the supervision of a president.

(d) Certain expenses incurred by Service members in the course of an offical board investigation or inspection may be reimbursable. This would be done in accordance with appropriate Service finance regulations or instructions. These requests should be submitted to the sponsoring Service finance office and charged to the appropriate law enforcement account. (For the Army, this account is the T6 account.)

(e) Records of board proceedings will be maintained as prescribed by records management policies and procedures for the Service of the sponsoring commander.

§ 631.11 Off-limits establishments and areas.

(a) An "off-limits" area is defined as any vehicle, conveyance, place, structure, building, or area prohibited to military personnel to use, ride, visit, or enter during the period in which it may be declared off-limits. As a matter of policy, the change in ownership, management, or name of any off-limits establishment does not, in and of itself, revoke the off-limits restriction.

(b) The establishment of off-limits areas is a function of command. It may be used by commanders to help maintain good discipline and an appropriate level of good health, morale, safety, morals, and welfare of Armed Forces personnel. Off-limits action is also used to preclude Armed Forces personnel from being exposed to crime conducive conditions or from becoming the victims of crimes. Where sufficient cause exists, commanders retain substantial discretion to declare establishments or areas temporarily off-limits to personnel or their respective command in emergency situations. Temporary off-limits restrictions issued by commanders in an emergency situation will be acted upon by the AFDCB on a priority basis.

(c) Armed Forces personnel are prohibited from entering establishments or areas declared off-limits in accordance with this regulation. Violations may subject the individual to disciplinary action under the Uniform Code of Military Justice (UCMJ). As general policy, these establishments will not be visited by military law enforcement personnel unless circumstances warrant.

(d) Prior to initiating routine off-limits action, installation commanders will attempt to correct, through contact with local civilian leaders, any adverse condition or situation. If these actions are unsuccessful, commanders will submit reports, requesting off-limits action, to the AFDCB serving their area.

(e) The AFDCB, prior to recommending off-limits restriction, will send written notice of the alleged adverse condition or situation, by certified mail with return receipt requested, to the individual or firm responsible for the alleged condition or situation. In this notice, the AFDCB will offer a reasonable time to correct the condition or situation and provide the individual or a designated representative with the opportunity to present any relevant information to the board. (See sample letter at annex A to App B.) If subsequent investigation reveals a failure by the responsible person to take corrective action, the board should recommend the imposition of the off-limits restriction.

(f) A specified time limit will not be established when an off-limits restriction is invoked. The adequacy of the corrective action taken by the proprietor of the establishment will be the determining factor in removing an off-limits restriction.

(g) A person whose establishment or area has been declared off-limits may, at any time, petition the president of the board for removal of the off-limits restriction. The petition will be in writing. It should state, in detail, the action taken to eliminate the adverse conditions or situations that caused the imposition of the restriction. In response to the petition, the President of the AFDCB may cause a thorough investigation to be made of the status of these adverse conditions or situations. A report of the results of the investigation would be presented to the board. The board then will either recommend removal or continuation of the off-limits restriction to the local sponsoring commander.

(h) Off-limits procedures to be followed by the boards are in appendix B. In the United States, off-limits signs will not be posted on civilian establishments by US military authorities.

Subpart C—Off-Installation Military Enforcement Services

§ 631.12 Objectives.

The primary objectives of off-installation enforcement are to—

(a) Render assistance and information to Armed Forces personnel.

(b) Reduce the incidence of off-installation military offenses committed by Armed Forces personnel.

(c) Enforce the UCMJ and other pertinent regulations, directives, and orders among persons subject to the UCMJ.

(d) Maintain effective liaison and cooperation with civil law enforcement and judicial agencies.

(e) Enhance apprehension efforts and return to military control absentees and deserters wanted by the Armed Forces.

(f) Maintain good community relations.

(g) Assist in the return of military members detained by civil authorities to military control.

§ 631.13 Applicability.

This chapter applies to off-installation enforcement activities. It does not apply to the activities of AFDCBs which were discussed in Subpart B. It is not applicable to the U.S. Navy.

§ 631.14 Responsibilities.

(a) Commanders of military installations will recognize the responsibility of civil authorities for the maintenance of peace and order in those areas not under military jurisdiction or control. They should—

(1) Conduct off-installation law enforcement in accordance with applicable Service policies and procedures.

(2) Coordinate the liaison functions to accomplish the objectives outlined in paragraph 3-1.

§ 631.15 Policy (for Army only).

(a) Within CONUS. (1) Normally, off-post patrols will not be established in CONUS. However, MACOM commanders may authorize military police to establish off-installation patrols if needed—

(i) In conjunction with military operations.

(ii) To safeguard the health and welfare of Army personnel.

(iii) When the type of offenses or the number of military personnel frequenting an area is large enough to warrant such patrols.

(2) In view of the important legal implications involved (see 18 U.S.C. 1385, the Posse Comitatus Act), the advice of the local Staff Judge Advocate should be sought prior to the implementation of such an authorization. When possible, MACOM commanders will execute a mutually acceptable written agreement with the civil police authorities.

(b) OCONUS. Off-post patrols will be kept at a minimum for mission accomplishment. Commanders of MACOMs may authorize off-post patrols as required by local conditions and customs as long as these patrols are in accordance with applicable treaties and Status of Forces Agreements.

(c) Military police personnel selected for off-post patrols must be experienced in law enforcement and have mature judgment. They must be thoroughly familiar with all applicable agreements and implementing standard operating procedures. They must understand the implications of the Posse Comitatus Act as it pertains to military law enforcement personnel assisting local law enforcement agencies.

(d) At a minimum, instructions to military police assigned to off-post patrols will specifically state that if they accompany civil police, they will do so for the sole purpose of enforcing the UCMJ among persons subject to the code. Their instructions will also specifically state that they are under the command and directly responsible to their military superiors and that they exercise no authority over the civil police or the civil populace. Accordingly, military police should be instructed that they are not to exercise any authority in a case of misconduct or apparent law violation unless the person concerned has been identified as a member of the military service. However, military law enforcement personnel may come to the aid of civil police in order to prevent the commission of a felony or injury to a civilian police officer.

§ 631.16 Policy (for Navy only).

(a) Off-base law enforcement activities by naval personnel (CONUS and Hawaii) shall be limited to liaison functions with civilian law enforcement agencies and courts and to the acceptance of "courtesy turnovers."

(b) The court liaison function is limited to the provision of an official Navy point of contact for the courts, to the provision of advice for individuals and local commands, and to court appearance with individuals from deployed commands.

(c) Courtesy turnovers will be limited to those persons whose behavior and attitude are acceptable and who desire to be returned to the custody of their parent command.

(d) Courtesy turnovers will be accepted from jails, police stations, etc., but not directly from police officers on the scene of an incident.

§ 631.17 Policy (for Marine Corps only).

(a) Within CONUS. (1) Normally, off-installation patrols will not be established in CONUS. However, installation commanders may request authority from HQMC (Code MPH) to establish off-installation patrols if needed.

(i) In conjunction with military operations.

(ii) To safeguard the health and welfare of Marine personnel.

(iii) When the type of offenses or the number of military personnel frequenting an area is large enough to warrant such patrols.

(2) In view of the important legal implications involved (see 18 U.S.C. 1382, the Posse Comitatus Act as made applicable to DoN) the advice of the local staff judge advocate/legal officer should be sought prior to the implementation of such an authorization. When possible, installation commanders will execute a mutually acceptable written agreement with the civil police authorities.

(b) Overseas Areas. Off-installation patrols will be kept at minimum for mission accomplishment. Commanders of installations may authorize off-installation patrols as required by local conditions and customs as long as these patrols are in accordance with applicable treaties and Status of Forces Agreements.

(c) Personnel selected for off-installation patrols must be experienced in law enforcement and have mature judgment. They must be thoroughly familiar with all applicable agreements and implementing standard operating procedures. They must understand the implications of the Posse Comitatus Act as it pertains to military law enforcement personnel assisting local law enforcement agencies.

(d) At a minimum, instructions to military police assigned to off-installation patrols will specifically state that if they accompany civil police, they will do so for the sole purpose of enforcing the UCMJ among persons subject to the code. Their instructions will also specifically state that they are under the command and directly responsible to their military superiors and that they exercise no authority over the civil police or the civil populace.

Accordingly, military police should be instructed that they are not to exercise any authority in a case of misconduct or apparent law violation unless the person concerned has been identified as a member of the military service. However, military law enforcement personnel may come to the aid of civil police in order to prevent the commission of a felony or injury to a civilian police officer.

(e) Absentee and deserter collection units to accept active duty absentee or deserter military personnel from civilian authorities may be established.

(f) Civil police and civil court liaison may be established.

(g) Installation commanders are authorized to establish other activities deemed necessary, provided each activity is within the scope of military purpose and authority, i.e., apprehensions where authorized by UCMJ, courtesy patrols, etc.

§ 631.18 Policy (for Air Force only).

See section B, AFR 125-19, for Air Force policy on off-installation patrols.

§ 631.19 Operations.

(a) In CONUS, incidents occurring off-installation normally are investigated by civil law enforcement agencies. These include State, county, or municipal authorities or a Federal investigative agency. When an incident of substantial interest to the U.S. Army occurs off-installation, the Armed Forces law enforcement organization exercising area responsibility will obtain copies of the civil law enforcement report. These are incidents that involve Army property or personnel. The civil law enforcement report would be processed according to applicable Service regulations.

(b) In oversea areas, off-installation incidents will be investigated in accordance with Status of Forces agreements and other appropriate U.S.-host country agreements.

(c) Off-installation enforcement operations may include the following activities:

(1) Town patrol.

(2) Town military police.

(3) Air Force Security Police patrols and stations.

(4) Civil police and civil court liaison.

(5) Public carrier and civilian transportation terminal patrols.

(6) Acceptance of active duty absentee or deserter military personnel turned over to Service police by civilian authorities.

(7) Other activities deemed necessary, provided each activity is within the scope of military purpose and authority.

(d) Activities in c above will be performed according to the Service policies in §§ 631.15—631.17. They will be based on the need and the fiscal and manpower restraints imposed by each Service. If practical, mutual agreements between two or more Services may be made to facilitate the conduct of joint Service off-installation enforcement services and absentee apprehension functions.

(e) Armed Forces law enforcement personnel will—

(1) Act under the command of, and be responsible to, military superiors and will not be placed under the control of civil authorities.

(2) Exercise authority over civil law enforcement agencies or persons not subject to the UCMJ only when they are on a military installation.

(3) Be authorized to apprehend persons subject to the UCMJ when there exists a reasonable belief that an offense under the code has been committed and that the person to be apprehended committed the offense. Civilians committing offenses on US military installations may be detained for the appropriate Federal, State, or local law enforcement agency.

(4) Return apprehended persons to representatives of their respective Services as soon as practicable.

(5) Process all reports received from other law enforcement agencies concerning crimes committed by military personnel, involving military property, or in which DOD has an interest.

Subpart D—Joint Service Law Enforcement Operations (Not Applicable to U.S. Navy)

§ 631.20 Organization.

In localities frequented by personnel of more than one Service, installation commanders may consider the establishment of joint law enforcement operations. Such operations may provide a more effective and economical accomplishment of off-installation law enforcement. When such operations are established, participating installation commanders will—

(a) Execute written agreements concerning the operations.

(b) Insure that each participating organization contributes its proportionate share of personnel, equipment, and supporting facilities.

§ 631.21 Joint law enforcement operations.

The following procedures will apply when establishing joint law enforcement operations:

(a) *Personnel.* Enlisted personnel selected for joint law enforcement duty should meet the following qualifications:

(1) Be temperamentally suited for police duty and received training or have experience in law enforcement.

(2) Be 19 years of age or older.

(3) Have no record of court-martial convictions or civilian offenses other than minor traffic violations.

(4) Be at least 5 feet 4 inches tall.

(5) Meet General Classification Test (GCT) (or equivalent test) score requirements of the parent Service for assignment to police duty.

(6) Possess a military motor vehicle operators license.

(7) Have at least 12 months remaining on current enlistment.

(b) *Logistics.* Personnel assigned to joint patrols will be equipped as prescribed by their respective Service regulations or directives to include the symbol of their law enforcement authority (badge or brassard).

(c) *Functions.* Joint law enforcement operations will perform, at a minimum, the following functions:

(1) Provide assistance to all Armed Forces personnel who are charged with civil violations.

(2) Maintain liaison with civilian enforcement and judicial agencies.

(3) Have the capability to receive military personnel apprehended by civilian authorities.

(d) *Duty assignments.* Personnel assigned to perform joint operations may be further assigned to perform duties in any of the following functional areas:

(1) Police station operation (desk sergeants, desk clerks, radio operators, etc.).

(2) Motor patrols necessary to conduct police and court liaison and to transport military personnel from the local civilian police.

(3) Operations.

(4) Administration.

APPENDIX A—CIVIL AGENCIES

A-1. *American Social Health Association.*

The American Social Health Association, upon request, provides information and consultation in the fields of venereal disease and drug abuse. Local AFDCBs desiring information should apply through one of the following regional offices of the association:

Eastern Regional Director, 86 Farmington Ave., Hartford, Connecticut 06105
Middle America Regional Director, 110 North High Street, Gahanna, Ohio 43230
Southern Regional Director, 173 Walton Street, NW., Atlanta, Georgia 30303
Western Regional Director, 785 Market Street, Rm. 1010, San Francisco, California 94103

A-2. *United States Brewers Association.*

a. The United States Brewers Association is the trade and public relations agency of the organized brewing industry in the United States. Upon request, it will assist military authorities within CONUS to eliminate conditions detrimental to the health, morals, and welfare of members of the Armed Forces in the cities and communities adjacent to military installations.

b. This association conducts an Armed Forces cooperation program to further "self-regulation" activities among beer dealers. It cooperates with State and local law enforcement officials in the promotion and maintenance of proper conditions in retail beer outlets throughout the country. Its services are available to AFDCBs for furthering joint action in the promotion of law observance and the maintenance of conditions of cleanliness and decency in retail beer outlets patronized by members of the Armed Forces.

c. Local sponsoring commanders requesting the assistance of the Brewers Association may apply to the Director of Field Services, US Brewers Association, Inc., 1750 K Street NW, Washington DC 20006.

A-3. *The National Environmental Health Association.*

The National Environmental Health Association is a professional organization representing various sanitary and environmental control groups. It provides information and consultation on solid waste management, air and water pollution, and other environmental health matters. Military members of the association belong to the Uniform Services Association of Sanitarians. All requests for assistance should be directed to the military association at the national association headquarters, 1600 Pennsylvania Ave., Denver, Colorado 80293.

A-4. *The Federal Trade Commission.*

The Federal Trade Commission was established in 1914 and is the principal agency of the Government responsible for preventing deceptive acts and practices in commerce. The Commission strives to keep competition fair and free from deceptive advertisement of food, drugs, cosmetics, therapeutic devices, catalog sales, and credit card purchases. It strives to protect consumers against the circulation of inaccurate or obsolete credit reports. Consumer Protection Specialists are located at the national and regional offices to render assistance. Regional offices are located in major metropolitan areas and frequently conduct investigations of acts peculiar to local communities. Inquiries should be made to the regional offices.

APPENDIX B—ARMED FORCES DISCIPLINARY CONTROL BOARD PROCEDURES GUIDE

B-1. *General.* This guide prescribes procedures for the establishment, operation, and coordination of Armed Forces Disciplinary Control Boards (AFDCBs). It is intended to insure uniformity of operation. AFDCB proceedings are not considered to be adversary in nature.

B-2. *Meetings.*

a. Regular meetings will be held once each quarter or as designated by the president. The sponsoring commander may specify whether the meetings, as scheduled, will be open or closed. If not specified, the decision is within the discretion of the president of the board. Normally, proceedings are closed, but may be opened to the public when circumstances warrant.

b. Special meetings may be called by the president of the board. Except by unanimous consent of members present, final action will be taken only on the business for which the meeting was called.

B-3. *AFDCB composition.*

a. Voting members will be selected according to paragraph 2-3 of this regulation.

b. A majority of voting members constitutes a quorum for board proceedings.

B-4. *Attendance of observers or witnesses.*

a. Representatives of the agencies listed below may be invited to attend as observers or witnesses.

(1) American Social Health Association.

(2) United States Brewers Association.

(3) Federal Bureau of Investigation.

(4) United States Attorneys.

(5) State and local police.

(6) State and local departments of health.

(7) State and local VD control officers.

(8) State alcoholic beverage control authorities.

(9) State and local prosecutors.

(10) Consumer affairs personnel.

(11) State and local narcotics investigative agencies.

(12) Immigration and Naturalization Service.

(13) Members of Judiciary directly concerned with law enforcement.

(14) Drug Enforcement Administration.

(15) Bureau of Alcohol, Tobacco, and Firearms.

(16) US Customs Service.

(17) Chamber of Commerce.

(18) Better Business Bureau.

(19) State license beverage association.

(20) National Institute of Drug Abuse and National Institute on Alcohol Abuse and Alcoholism.

(21) Adult probation department/social services.

(22) Any other representation deemed appropriate by the sponsoring command, i.e., news media, union representatives, and so forth.

b. Witnesses and observers will be listed in the minutes of the meeting if invited by the board to participate in that capacity.

c. Board action may be recommended by a majority vote of the voting members present at a regular or special board meeting.

B-5. *Appropriate areas for board consideration.*

a. Boards will study and take appropriate action in connection with all conditions detrimental to the good discipline, health, morals, welfare, safety, and morale of Armed Forces personnel. This will include, but not be limited to, the following:

(1) Crime and misconduct.

(2) Narcotics, marihuana, dangerous drugs, and drug abuse paraphernalia.

(3) Liquor violations.

(4) Excessive number of unauthorized absences.

(5) Gambling (when in violation of State or local law).

(6) Military and civilian relationships that may be detrimental to service personnel.

(7) Unsanitary and other adverse conditions in establishments frequented by Armed Forces personnel.

(8) Off-installation/base safety problems.

(9) Unethical or illegal business practices.

(10) Prostitution and venereal disease.

(11) Discriminatory practices.

(12) Other health hazards.

b. The board will immediately forward to the local commander concerned the circumstances reported to the board involving discrimination based on race, color, sex, religion, age, or national origin.

B-6. *Off-limits procedures.*

a. Off-limits restrictions should be invoked only when there is substantive information indicating that an establishment or area frequented by Armed Forces personnel presents conditions which adversely affect the health, safety, welfare, morale, or morals of such personnel. It is essential that boards do not act arbitrarily; actions must not be of a punitive nature. Boards should work in close cooperation with local officials and proprietors of business establishments and seek to accomplish their mission through mutually cooperative efforts. Boards should encourage personal visits by local military and civilian enforcement or health officials to establishments considered below standard. AFDCBs should point out unhealthy conditions or undesirable practices to establishment owners or operators in order to produce the desired corrective action.

b. Prior to initiating routine off-limits action, the local commander will attempt to correct any situation which adversely affects the welfare of Armed Forces personnel. This will be done through contact with community leaders.

c. Unless emergency conditions exist which are extremely harmful to Armed Forces personnel, an establishment will not be recommended for off-limits action until the proprietor has been—

(1) Notified in writing of the adverse condition/circumstances.

(2) Given an opportunity to be heard and a reasonable time in which to correct deficiencies.

d. If the board decides to attempt to investigate or inspect an establishment, the president or a designee will prepare and submit a report of findings and recommendations at the next meeting. This will insure complete and documented information concerning doubtful adverse conditions.

e. When the board concludes that conditions adverse to Armed Forces personnel do exist, the owner or manager will be sent a letter of notification (annex A). This letter will advise him or her to raise standards and that, if such conditions or practices continue, off-limits proceedings will be initiated. In cases involving discrimination, the board should not rely solely on letters written by the Equal Opportunity Office and Military Affairs Committee or investigations of alleged racial discrimination. The AFDCB should send letters to the proprietor, informing him or her that off-limits action is being considered and inviting him or her to the next board meeting. Boards should send letters directly to the proprietors when any off-limits action is being considered. If a proprietor takes remedial action to correct undesirable conditions previously noted, the board should send a letter of appreciation (annex B). Any correspondence with the individuals responsible for adverse conditions leading to off-limits action will be by certified mail.

f. If the undesirable conditions are not corrected, an invitation (annex C) will be written to the proprietor. This letter will invite the proprietor to appear before the board to explain why the establishment should not be placed off-limits. The proprietor may designate, in writing, individual(s) to represent him or her at the board.

g. In cases where proprietors have been invited to appear before the board, the president of the board will perform the following actions:

(1) Prior to calling the proprietor—

(a) Review the findings and decision of the previous meeting.

(b) Call for inspection reports.

(c) Afford an opportunity to those present to ask questions and discuss the case.

(2) When the proprietor and/or his or her counsel is called before the board—

(a) Present the proprietor with a brief summary of the complaint concerning his or her establishment.

(b) Afford the proprietor an opportunity to present matters in defense of the allegation.

(c) Offer those present an opportunity to question the proprietor. After the questioning period, provide the proprietor a final opportunity to make an additional statement or to make commitments concerning his or her willingness to cooperate.

(3) After excusing the proprietor from the meeting, the president and board will discuss suggestions and recommendations for disposition of the case in closed session.

h. No member of a board shall reprimand or admonish in any degree a person appearing before a board. Board members do not have jurisdiction over such individuals. Off-limits actions are designed solely for the protection of Armed Forces personnel and are used as a last resort when all other means have failed.

i. The board should recommend that the offending establishment be placed off-limits only after the following:

(1) The letter of notification (annex A) has been sent.

(2) An opportunity to appear before the board has been extended.

(3) Further investigation indicates that improvements have not been made.

j. The minutes will indicate a board's action in disposing of each case. When a recommendation is made that an establishment be placed off-limits, the minutes will show the procedural steps followed in reaching the decision.

k. Recommendations of the board will be submitted to the sponsoring commander for consideration. The recommendations will then be forwarded to the other installation commanders who furnish board representation (annex D). If no objection to the recommendations is received within 10 days, the sponsoring commander will either approve or disapprove the recommendations. He will then forward this decision to the board president.

l. Upon approval of the board's recommendations, the president will dispatch a declaration that the off-limits restriction has been imposed (annex E).

m. No definite time limit should be specified when an off-limits restriction is invoked. The adequacy of the corrective action taken by the proprietor of the establishment must be the determining factor in removing an off-limits restriction.

n. Military commanders have no authority to post off-limits signs on private property. Appropriate civil officials may post private property when informed by military authorities that an establishment or area has been declared off-limits to Armed Forces personnel.

o. Emergency off-limits action: In emergencies, commanders may temporarily declare establishments or areas off-limits to Armed Forces personnel subject to their jurisdiction. They must then report the circumstances immediately to the commander sponsoring the board. Detailed justification for this emergency action will be provided to the board for its use.

B-7. *Removal of off-limits restrictions.*

a. Removal of an off-limits restriction requires board action. Proprietors of establishments declared off-limits should be advised that they may appeal to the appropriate board at any time. In their appeal, they should submit the reason why, in their opinion, the restriction should be removed. A letter of notification of continuance of off-limits restriction should be sent to the proprietor if the board does not favorably consider removal of an off-limits restriction (annex F). If, after exhausting all appeals at the board/local sponsoring commander level, the proprietor is not satisfied with those decisions, his or her case will be forwarded to the next higher commander of the sponsoring commander for review and resolution. Boards should make at least quarterly inspections of off-limits establishments. A statement that an inspection has been made should be reflected in their minutes.

b. When it has been determined that adequate corrective measures have been taken by the owner or manager of an establishment or area to meet the requirements for good discipline, health and welfare of Armed Forces personnel, the appropriate board will take the following actions:

(1) Discuss the matter at the next meeting and make an appropriate recommendation.

(2) Forward recommendation for removal of off-limits restriction to the sponsoring commander. If the recommendation is approved, dispatch a letter of removal of off-limits (annex G or H).

(3) Record what action was taken in the minutes of the board meeting.

B-8. *Duties of the president of the board.*

The president of the board will—

a. Schedule and preside at all meetings of the board and sign appropriate correspondence.

b. Prepare an agenda prior to each regular meeting and insure its distribution to each voting member at least 7 days prior to the meeting.

c. Be responsible for the preparation and distribution of the minutes of all meetings and for maintenance of appropriate records and files pertaining to AFDCB activities. (See para. 2-6e.)

d. Inform members of any special meeting and its purpose as far in advance as possible.

e. Prepare and distribute to major commands a copy of the minutes of each meeting.

f. Supervise the recorder in performance of all administrative duties as required.

B-9. *Minutes.*

a. Annex I is a guide for the preparation of the minutes of board meetings. Minutes will be prepared in accordance with administrative formats for minutes of meetings prescribed by the Service of the sponsoring commander. The written minutes of board meetings will be deemed the official record of board meetings. Verbatim transcripts of board meetings are not required. The reasons for approving or removing an off-limits restriction, to include a complete address of the establishment or area involved, should be indicated in the order of business. In addition, the board's action will be shown in order of sequence, such as dispatch of letter of notification, appearance before board, recommendation to local sponsoring commander, or action taken by local sponsoring commander. Change in the name of an establishment or areas in an off-limits status will also be included.

b. Distribution of the minutes of board meetings will be limited to the following:

(1) Each voting member, sponsoring command and other commands, and installations represented on or serviced by the board.

(2) Each civilian and military advisory member, if deemed appropriate.

(3) Civilian and Government agencies, within the State in which member installations are located, having an interest in the functions of the board, if appropriate.

c. The minutes of the board meeting, containing the board's recommendations, will be forwarded in writing to the sponsoring commander. The minutes will be accompanied by a request that the recommendations be approved for implementation. The sponsoring commander will, by written indorsement to the president of the board, approve or disapprove the minutes and recommendations.

d. Board minutes are subject to the release and disclosure provisions of DOD Directive 5400.7 and implementing Service regulations.

B-10. *Installation commander and board relationship.*

Military installation commanders within a board's areas of responsibility must be thoroughly acquainted with the mission and services provided by AFDCBs. Board members should keep their respective commanders informed of command responsibility pertaining to board functions and actions.

B-11. *Public affairs.*

a. Because of the sensitive nature of subject matter discussed, no public announcement will be initiated in connection with board meetings. However, any board proceeding which is open to the public will also be open to representatives of the news media. Representatives of the news media will be considered as observers and will not participate in the discussion of matter considered by the board. Members of the news media may be invited to participate in an advisory status in coordination with the Public Affairs Officer.

b. News media interviews and releases will be handled through the Public Affairs Offices in accordance with this regulation and AR 360-5.

ANNEX A—LETTER OF NOTIFICATION

(Letterhead)

(Appropriate AFDCB)

Proprietor

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Dear Sir: As President of the Armed Forces Disciplinary Control Board, it is my duty to inform you of certain undesirable conditions reported at your establishment which adversely affect the health and welfare of personnel in the Armed Forces. It has come to the attention of the board that (*cite pertinent information*). You are advised that it will be necessary for this board to initiate action to determine whether your establishment should be placed off-limits to personnel of the Armed Forces if the above cited undesirable condition(s) is (are) not eliminated. (*Include if applicable*). Within (*cite period*), a representative of this board will visit your establishment in order to determine if steps have been taken to correct the conditions outlined above.

Sincerely,

________,

President, AFDCB.

(NOTE: When sent by mail, send letter by *CERTIFIED MAIL, RETURN RECEIPT REQUESTED.*)

ANNEX B—LETTER OF APPRECIATION

(Letterhead)

(Appropriate AFDCB)

Proprietor

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Dear Sir: Reference is made to my letter dated ——— concerning certain undesirable conditions reported at your establishment which adversely affect the health and welfare of personnel in the Armed Forces.

The board appreciates your action in correcting the deficiencies previously noted. In view of this fact, the board contemplates no further action with respect to this matter at the present time.

The board hopes that you will continue to operate your establishment in the manner which will benefit the health and welfare of Service personnel. Your continued cooperation is solicited.

Sincerely,

________,

President, AFDCB.

ANNEX C—LETTER OF INVITATION

(Letterhead)

(Appropriate AFDCB)

Proprietor

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PART 632—USE OF FORCE BY PERSONNEL ENGAGED IN LAW ENFORCEMENT AND SECURITY DUTIES

Sec.

632.1 Purpose.
632.2 Applicability.
632.3 Policy.
632.4 Deadly force.
632.5 Use of firearms.
632.6 Administrative instructions.

AUTHORITY: 10 U.S.C. 3012.

SOURCE: 48 FR 17074, Apr. 21, 1983, unless otherwise noted.

§ 632.1 Purpose.

This regulation implements DOD Directive 5210.65. It sets uniform policy for use of force by DA law enforcement and security personnel.

§ 632.2 Applicability.

(a) This regulation applies to all DA including Army National Guard and Army Reserve and civilian personnel engaged in law enforcement or security duties, and those civilian contract guard personnel performing security duties. These duties include guarding U.S. Military prisoners and interior guard duties.

(b) Except for personnel guarding U.S. military prisoners, this regulation does not apply to persons assigned to—

(1) A wartime combat zone.

(2) A non-wartime hostile fire area.

(3) Duties with the U.S. Secret Service.

(4) Civil disturbance control. (See para 4-12, FM 19-15.)

§ 632.3 Policy.

(a) Law enforcement and security personnel will use force only when they cannot fulfill their duties without it. They will use the minimum force needed; only as a last resort will they use deadly force. (See §§ 632.3(c), 632.4, and 632.5.)

(b) Commanders are encouraged to substitute nonlethal devices (such as night sticks) for firearms when adequate for law enorcement and security personnel to safely fulfill their duties.

(c) In evaluating the degree of force needed for specific law enforcement or security situations, consider these options:

(1) Verbal persuasion.

(2) Unarmed defense techniques.

(3) Chemical aerosol irritant projectors (M36). (May be subject to host nation or local restrictions.)

(4) MP club.

(5) MP working dogs.

(6) Deadly force. (§ 632.4)

(d) Entrapment, i.e., inducing someone to commit an offense in order to prosecute that person, is not permitted in law enforcement or security duties.

(e) Use MP working dogs in accordance with the provisions of AR 190-12. Release dogs only if a lesser measure of force would not be effective.

(1) Releasing a sentry dog to apprehend a suspect is a greater measure of force than releasing a patrol dog.

(2) Before releasing a military dog for attack, give a challenge or order to halt.

§ 632.4 Deadly force.

(a) Deadly force is destructive physical force directed against a person or persons (e.g., firing a lethal weapon). Use it only in extreme need, when all lesser means have failed or cannot reasonably be used. Use deadly force for one or more of the following reasons only:

(1) In self-defense, when in imminent danger of death or serious injury.

(2) To protect property related to national security, when reasonably necessary to prevent—

(i) Threatened theft, damage, or espionage aimed at property or information specified by a commander or other competent authority as vital to national security. (See § 632.4(b) below.)

(ii) Actual theft, damage, or espionage aimed at property or information which, though not vital, is substantially important to national security. (See § 632.4(b) below.)

(iii) Escape of an individual whose unauthorized presence near property or information vital to national security is a reasonable threat of theft, sabotage, or espionage.

(3) To prevent actual theft or sabotage of property (such as operable weapons or ammunition) which could cause deadly harm to others in the hands of an unauthorized person.

(4) To prevent serious offenses against a person or persons (e.g., armed robbery, rape, or violent destruction of property by arson, bombing).

(5) To apprehend a suspect believed to have committed any of the types of offenses named in (a) (2), (3), and (4) of this section.

(6) To prevent the escape of a prisoner (when authorized by a commander or other competent authority and reasonably necessary).

(7) To obey lawful orders from higher authority governed by this regulation.

(b) A commander or other competent authority will specify that property or information is—

(1) Vital to national security only when its loss, damage, or compromise would seriously harm national security or an essential national defense mission.

(2) Substantially important to national security based on the mission and the material or information required to perform it.

(c) To comply with local law or international agreement or arrangements, a commander may impose further restrictions on using deadly force. (Restrictions should not unduly compromise U.S. security interests).

(d) Security criteria and standards for protection of nuclear weapons (§ 632.4(c) AR 50-5-1) and for chemical agents (§ 632.4(c) AR 50-6-1) also apply.

§ 632.5 Use of firearms.

(a) If it becomes necessary to use a firearm in any of the circumstances described in § 632.4 above, observe the following precautions when possible:

(1) Give an order to halt before firing.

(2) Do not fire if shots are likely to harm innocent bystanders.

(3) Since warning shots could harm innocent bystanders, avoid firing them. However, when lesser degrees of force have failed, the law enforcement or security person may judge that warning shots would help to control the situation without using deadly force. If able to avoid hazards to innocent persons in these cases, fire warning shots.

(4) Aim to disable. At times it may be difficult to fire with enough precision to ensure disabling rather than killing. If the use of firearms are otherwise authorized by this regulation, such circumstances will not rule out their use.

§ 632.6 Administrative instructions.

(a) Commanders will ensure that all persons assigned to law enforcement, security, or US military prisoners' guard duties will, before performing these duties—

(1) Receive instructions on regulations regarding use of force.

(2) Show knowledge and skill in the use of—

(i) Unarmed defense techniques.

(ii) MP club.

(iii) Individual chemical aerosol irritant projectors.

(iv) Their assigned firearms.

(b) Commanders will also—

(1) Provide periodic refresher training to ensure continued proficiency and updated knowledge in these skills. (Include applicable host nation requirements.)

(2) Require MPs with law enforcement duties to qualify yearly with their assigned handguns.

(3) Require interior guards to receive instructions regarding use of force. (Give periodic refresher training to ensure continued familiarity with regulations.)

(c) Requirements concerning use of the MP club and chemical aerosol irritant projectors apply only when these weapons are issued items or are carried on duty.

(d) FM 19-5 contains procedures and methods for using unarmed defense techniques and the MP club.

PART 633—INDIVIDUAL REQUESTS FOR ACCESS OR AMENDMENT OF CID REPORTS OF INVESTIGATION

Sec.
633.11 Access to CID reports.
633.12 Amendment to CID reports.
633.13 Submission of requests.

AUTHORITY: Sec. 3012, 70A Stat. 157; 10 U.S.C. 3012.

SOURCE: 44 FR 44156, July 27, 1979, unless otherwise noted.

§ 633.11 Access to CID reports.

All requests for access to CID reports made under the Privacy or Freedom of Information Acts will be processed in accordance with AR 340-21 and AR 340-17, respectively.

§ 633.12 Amendment to CID reports.

USACIDC reports of investigation (ROI) are exempt from the amendment provisions of the Privacy Act and AR 340-21. Requests for amendment will be considered only under the provisions of this regulation. Requests to amend USACIDC reports will be granted only if the individual submits new, relevant and material facts that are determined to warrant their inclusion in or revision of the ROI. The burden of proof is on the individual to substantiate the request. Requests to delete a person's name from the title block will be granted only if it is determined that there is not probable cause to believe that the individual committed the offense for which he or she is listed as a subject. It is emphasized that the decision to list a person's name in the title block of a USACIDC report of investigation is an investigative determination that is independent of whether or not subsequent judicial, nonjudicial or administrative action is taken against the individual. Within these parameters, any changes in the ROI rest within the sole discretion of the Commanding General. USACIDC, whose decision will constitute final action on behalf of the Secretary of the Army with respect to this regulation.

§ 633.13 Submission of requests.

Requests for access to or amendment of USACIDC investigative reports will be forwarded to Commander, USACIDC, ATTN: CIJA-RI, 5611 Columbia Pike, Falls Church, VA 22041.

PART 634—MOTOR VEHICLE TRAFFIC SUPERVISION

Sec.
634.1 General.
634.2 Driving privileges.
634.3 Motor vehicle registration and driver records.
634.4 Police traffic supervision.
634.5 Off-installation traffic activities.
634.6 Traffic point system.
Appendix A—Explanation of Terms as They Pertain to This Joint Service Regulation.
Appendix B—Chemical Testing Policies and Procedures.
Appendix C—State Chemical Breath Testing Training Programs
Appendix D—Chemical Breath Testing, Training, and Certification Requirements

AUTHORITY: 10 U.S.C. 3012(g); 5 U.S.C. 2951; Pub. L. 89-564; 89-670; 91-605; 93-87.

SOURCE: 48 FR 39919, Sept. 2, 1983, unless otherwise noted.

§ 634.1 General.

(a) *Purpose.* This regulation establishes policy, responsibilities, and procedures for motor vehicle traffic supervision, which includes but is not limited to the following: granting, suspending, or revoking the privilege to operate a privately owned motor vehicle on a military installation or in oversea areas where traffic operations are under military supervision; registration of motor vehicles with a military installation or department; administration of vehicle registration and driver performance records, to include driver improvement, police traffic supervision and off-installation traffic activities.

(b) *Applicability.* (1) The provisions of this regulation are applicable to individuals serving in, or employed by, the military services and the Defense Logistics Agency, and all other individuals subject to the motor vehicle registration and driver records requirements set forth in § 634.3 of this part.

(2) The terms "installation" and "installation commander," used throughout this regulation apply equally to overseas "commands" and "major oversea commanders" responsible for command motor vehicle traffic supervision programs. Commanders in oversea areas are authorized to modify policies and procedures when dictated by host-nation relationships, treaties or agreements.

(c) *General policy.* (1) The principal objective in supervising motor vehicle traffic is to assure safe and efficient movement of vehicles, material, and personnel to destinations over streets and highways. Programs and procedures will be based on National Highway Safety Program Standards (NHSPS) promulgated under the National Highway Safety Act of 1966, as amended. Subjects addressed by NHSPS and considered applicable to the military services and Defense logistics agency motor vehicle traffic supervision programs include periodic motor vehicle inspections, motorcycle and pedestrian safety, driver education, traffic codes, alcohol in relation to highway safety identification and surveillance of accident locations, traffic engineering services, police traffic services and records, and accident investigation and reporting.

(2) The goal of motor vehicle traffic supervision is to reduce traffic accidents and deaths, injuries, and property damage resulting therefrom. Traffic accidents are caused and, as such, are preventable. Motor vehicle accidents, as caused occurrences, will be examined through an assessment of the roadway and environment, the operator, the vehicle, and supervision and control measures employed. To be fully effective, motor vehicle traffic supervision programs require total coordination and integration of installation education, engineering, and enforcement capabilities and resources.

(d) Intoxicated driving is incompatible with the maintenance of high standards of performance, military discipline, and readiness, and is a serious threat to the health and welfare of the Army community. Army commanders will insure that intoxicated drivers are removed from the roads as quickly as possible and that appropriate sanctions are expeditiously applied.

(e) *Responsibilities, Departmental.* (1) The Deputy Chief of Staff for Personnel, DA and designated officers of the Departments of Navy and Air Force, the Marine Corps, and the Defense Supply Agency, exercise staff supervision over policy programs for motor vehicle traffic supervision applicable to their respective services or agencies and will:

(i) Develop standardized policies and procedures.

(ii) Coordinate and maintain liaison with interested staff agencies and other military departments in matters pertaining to motor vehicle traffic supervision including the establishment of working groups and committees.

(iii) Coordinate and maintain liaison with appropriate departmental safety personnel in matters pertaining to motor vehicle traffic safety and accident reporting systems.

(iv) Coordinate with national, regional, and State traffic officials and agencies, including active participation in conferences and workshops sponsored by government or private groups at the national level.

(v) Assist in the organization and monitoring of police traffic supervision training within their respective Departments.

(vi) Coordinate and maintain liaison with the Department of Transportation and other Federal departments and agencies regarding Federal Traffic Safety standards and programs which are applicable to the military services' traffic supervision programs.

(2) *Major commanders.* Major commanders of the Army, Navy, Air Force, and Marine Corps will:

(i) Manage motor vehicle traffic supervision within their commands to insure maximum compliance with the objectives of this regulation to improve the service-wide traffic safety performance of vehicle operators.

(ii) Cooperate with and support programs of State and regional highway traffic safety organizations.

(iii) Coordinate regional motor vehicle traffic supervision activities with other major military commanders within assigned geographic areas of responsibility.

(iv) Encourage establishment of agreements between installation and host-states for reciprocal reporting of moving violations and suspension and revocation of driving privileges.

(3) *Installation or activity commanders.* Installation or activity commanders will:

(i) Establish an effective motor vehicle traffic supervision program in accordance with this regulation.

(ii) Cooperate with civil police agencies and other local governmental agencies or civil traffic organizations concerned with motor vehicle traffic supervision.

(iii) Insure that all matters pertaining to motor vehicle traffic supervision are properly related to the overall installation traffic safety program.

(iv) Where possible, actively support and participate in Alcohol Safety Action Projects (ASAP) in neighboring civil communities.

(4) *Law enforcement officer.* The installation or activity law enforcement officer, while sharing the responsibility for a balanced traffic program with other staff agencies, is the officer charged with overall staff responsibility for motor vehicle traffic supervision.

(5) *Safety officer.* Within the mission, scope, and responsibility for the installation safety program, safety personnel will participate in all activities relating to the prevention of motor vehicle traffic accidents.

(6) *Facilities engineer or engineer officer (Public Works Officer at Navy installations).* The facilities engineer or engineer officer is responsible for performing that phase of engineering which is concerned with the planning, construction, and maintenance of streets, highways, and abutting lands. Additionally, he is responsibile for the procurement, construction, installation and maintenance of permanent traffic control devices for control of traffic flow and parking in coordination with the law enforcement officer. Traffic signs, signals, and pavement markings will conform to the standards established in the current Manual on Uniform Traffic Control Devices for Streets and Highways. Planning,

design, construction and maintenance of streets and highways should conform to the NHSPS standards on highway design, construction, and maintenance, wherever practicable.

(7) *Traffic engineer.* The traffic engineer is responsible for conducting formal traffic engineering studies and applying traffic engineering measures and techniques, including the use of traffic control devices, to reduce the number and severity of traffic accidents. When an installation traffic engineer is not available, traffic engineering services may be requested through appropriate channels from the Commander, MTMC (§ 634.4(3)).

(8) *Alcohol and drug control officer.* The alcohol and drug control officer for Army installations, and comparable officers of other services, are responsible for providing appropriate alcohol education/treatment and/or rehabilitation services to personnel identified as having alcohol and/or drug abuse problems.

§ 634.2 Driving privileges.

(a) *Policy.* The operation of a privately owned motor vehicle on a military installation constitutes a conditional privilege extended by the installation commander. Individuals desiring the privilege will meet the following sustaining conditions:

(1) Comply with laws and regulations governing motor vehicle operation on the installation.

(2) Comply with the requirements for installation registration (§ 634.3).

(3) Possess while operating a motor vehicle and produce on demand of enforcement personnel:

(i) Proof of vehicle ownership or State registration.

(ii) A valid State driver's license.

(iii) A valid record of motor vehicle safety inspection, if required.

(4) Military personnel agree to attend remedial driver training or participate in alcohol/drug treatment or rehabilitation programs as determined by the installation commander. Civilian personnel and dependents may participate in such programs on a voluntary basis.

(5) Any person granted the privilege of operating a motor vehicle on a military installation shall be deemed to have given his or her consent to a chemical test of his or her blood, breath or urine for the purpose of determining the alcoholic content of his or her blood if lawfully stopped, apprehended, or cited for any offense allegedly committed while driving or in actual physical control of a motor vehicle on the installation under the influence of intoxicating liquor. The test shall be incidental to a lawful traffic stop, apprehension, or citation and administered at the direction of the installation law enforcement official having reasonable cause to believe such person was driving or in actual physical control of a motor vehicle upon the installation while under the influence of intoxicating liquor. Any person who is dead, unconscious, or otherwise in a condition rendering him or her incapable of refusal shall be deemed not to have withdrawn consent and such tests may be administered whether or not such person is told that failure to submit to or complete the test will result in the suspension of the privilege to operate a motor vehicle. (See procedures for invoking implied consent in § 634.4(3)(iii) of this part.

(b) *Suspension and revocation.* The privilege of driving privately owned motor vehicles on military installations is subject to either administrative suspension or revocation for cause by an installation commander or his designated representative. Suspension and revocation actions based on commission of serious moving traffic violations and/or point assessment for other moving violations are covered in § 634.6 of this part. The termination of installation registration is inherent to revocation actions and individuals must make application for re-registration in accordance with § 634.3 of this part after the expiration of the specified period.

(1) *Suspension.* (i) The suspension of the driving privilege for a period not to exceed six months normally is applied to individuals when other measures such as counselling, remedial driver training or rehabilitation programs have failed to produce the desired driver performance. Driving privileges also may be suspended whenever an individual subject to this

regulation consistently (as determined by the installation commander) violates installation traffic regulations.

(ii) Immediate suspension pending resolution of drunk driving charges is authorized for Army personnel and their dependents, DA civilian employees, and others with installation driving privileges, regardless of the geographic location of a drunk driving incident. Suspension is authorized for other civilian persons only with respect to incidents occurring on the installation or in areas subject to military traffic supervision. After a review of available evidence § 634.2(b)(4)(i) personnel will immediately have their installation driving privileges suspended pending resolution of drunk driving charges brought in the following circumstances (in such cases, personnel may request a hearing per § 634.2(b)(4) this regulation; however, driving privileges will remain suspended pending a determination at the hearing):

(A) Lawful apprehension for drunk driving.

(B) Refusal to take or complete a lawfully requested chemical test for blood alcohol content.

(C) Driving or being in physical control of a motor vehicle on post when blood alcohol content is 0.10 percent or higher, irrespective of other charges; or off post when blood alcohol content exceeds the applicable state standard, irrespective of other charges.

(2) *Revocation.* (i) The revocation of installation driving privileges is a severe administrative measure to be exercised for serious moving violations or when other available corrective actions fail to produce the desired driver improvement. Revocation of the driving privilege will be for a specific period, but never less than six months.

(ii) Driving privileges are subject to revocation when an individual fails to comply with any of the conditions requisite to the granting of the privilege (see § 634.2(a) of this section).

(iii) Driving privileges will be revoked for a mandatory period of one year in the following circumstances:

(A) When the installation commander or designee has determined that the person lawfully apprehended for driving while intoxicated/drunk driving refused to submit to or complete a test to measure blood alcohol content required by the law of the jurisdiction, this regulation, or installation traffic code.

(B) When there has been a conviction, nonjudicial punishment, or an administrative determination in civilian channels (for example, suspension or revocation of driver's license) for drunk driving. Appropriate official documentation of such conviction, etc., is required as the basis for revocation.

(iv) When temporary suspensions under § 634.2(b)(1)(ii) of this section are followed by revocations, the period of revocation is computed beginning from the date the original suspension was imposed, exclusive of any period during which full driving privileges may have been restored pending resolution of charges. (Example: Privileges were initially suspended on 1 January 1983 for a charge of drunk driving with a blood alcohol content of 0.14 percent. A hearing was held, extreme family hardship was substantiated, and privileges were restored on 1 February pending resolution of the charge. On 1 March there was a conviction for drunk driving. The mandatory one-year revocation period will consist of January 1983 plus March 1983 through January 1984, for a total of twelve months with no installation driving privileges.)

(v) Administrative revocation for a period of no less than five years will be imposed against persons apprehended while driving on the installation while a suspension or revocation of their driving privileges and/or drivers license is in effect. In addition to this administrative action, separate action may also be initiated on the basis of any traffic offense committed.

(vi) For each subsequent determination within a five-year period that revocation is authorized under § 634.2(b)(2)(iii), the offender will be prohibited from obtaining or using a US Government Motor Vehicle Operator's Identification Card (SF 46) for a minimum of six months. This does not preclude a commander from imposing such prohibition for a first offense, or for a longer period of time for a first or subsequent offense, or for such other reasons as may be appropriate.

(3) *Restricted privileges.* (i) Requests for restricted driving privileges subsequent to suspension or revocation of installation driving privileges will be referred to one of the following officials for determination:

(A) General Court-Martial Convening Authority will act upon all requests for restricted driving privileges subsequent to suspension or revocation of installation driving privileges for apprehension or conviction for drunk driving/driving while intoxicated.

(B) Installation commanders will act upon other cases.

(ii) The appropriate authority may consider and grant requests for restricted driving privileges or probation to preclude adverse military mission impact, severe family hardship, or detrimental effect on ongoing or contemplated alcohol or drug treatment and rehabilitation programs involving the affected individual. Probation or restricted driving privileges will not be given to any person whose drivers license is under suspension or revocation by a state, Federal, or host country civil court or administrative agency.

(iii) The limitations of the restricted driving privilege (for example, authorization to drive to and from place of employment of duty, and/or selected installation facilities such as hospital, commissary, etc., within specified time periods) and conditions of the probation will be specified in writing and provided the individual concerned. Persons detected in violation of the restricted privilege or probation are subject to revocation action as prescribed in § 634.2(b)(2)(v) of this section. The appropriate authority may reinstate the original period of suspension or revocation for cause (for example, driver at fault in a traffic accident, or driver cited for a moving traffic violation).

(4) *Administrative due process.* Individual Services may promulgate separate regulations establishing administrative due process procedures. The following procedures apply to actions under this paragraph taken by Army commanders with respect to Army personnel and family members, and civilian personnel operating motor vehicles on Army installations.

(i) Prior to suspension actions under § 634.2(b)(1)(iii) of this section, the best evidence readily available will be presented promptly to an individual designated by the installation commander for review and authorization for immediate suspension of installation driving privileges. The reviewer should be an officer outside the installation law enforcement agency. Best readily available evidence includes material such as sworn witness statements, military or civilian police report of apprehension, chemical test results if completed, refusal to consent to chemical testing, video tapes, statements by the apprehended individual, field sobriety or preliminary breath test results, and/or other pertinent evidence. Reviews normally will be accomplished within twelve hours after assembly of evidence. When detailed and reliable evidence is not available, immediate suspension should not be authorized. For example, suspensions for off-post offenses should not be based on published lists of arrested persons, statements by parties not witnessing the apprehension, telephone conversations, or other information not supported by documented and reliable evidence. Installation commanders may authorize the Provost Marshal to conduct reviews and authorize suspension in cases where the designated reviewer is not reasonably available and, in the judgment of the Provost Marshal, such immediate action is warranted. Review by the designated officer will follow as soon as practicable in such cases. When a suspension notice is based on the Provost Marshal's review, there is no requirement for confirmation notice following subsequent review by the designated officer.

(A) For active duty military personnel, written notice of suspension will be provided without delay to the individual's unit chain of command for immediate presentation to the individual.

(B) For civilian personnel, written notice of suspension will normally be provided without delay via registered mail. If the person is employed on the installation, such notice may be forwarded through the military or civilian supervisor. When the notice of suspension is forwarded through the supervisor, the person whose privileges are suspended should be required to provide written acknowledgement of receipt of the suspension notice.

(ii) Notices of suspension will include the following:

(A) The fact that the suspension can be made a revocation under § 634.2(b)(2)(iii) of this section.

(B) The right to request, in writing, a hearing before the installation commander or designee to determine if post driving privileges will be restored pending resolution of the charge; and that such request must be made within five working days of the notice of suspension.

(C) The right of DA civilian employees to have a personal representative present at the administrative hearing in accordance with applicable laws and regulations.

(iii) If a hearing is requested, it must take place within ten working days of receipt of the request. The suspension will remain in effect until a decision has been made by the installation commander or designee, but will not exceed seven working days after the hearing while awaiting the decision. If there is no decision by that time, full driving privileges will be restored until such time as the accused is notified of a decision to continue the suspension.

(iv) Hearing on suspension actions under § 634.2(b) of this section pending resolution of charges will only cover the pertinent issue(s) of whether—

(A) The law enforcement official had reasonable grounds to believe the person was driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor;

(B) The apprehension was lawful;

(C) The person was lawfully requested to submit to a blood alcohol content test, and had been informed of the consequences of refusal of such test (unless incapable of refusing, as described in § 634.2(a)(5)).

(D) The person refused to submit to the blood alcohol content test, or failed to complete the test, or submitted to the test and the result was 0.10 percent or higher blood alcohol content for an on-post apprehension, or in violation of state laws for an off-post apprehension;

(E) The testing method used was valid and reliable, and the results accurately evaluated;

(v) For offenses other than those described in §§ 634.2(b)(1)(ii) and 634.2(b)(1)(iii) of this section suspension or revocation of the installation driving privilege will not become effective until the installation commander or designee notifies the affected person and offers the person an administrative hearing. Suspension or revocation will take place seven days after this written notice is received unless an application for a hearing is made by the affected person within this period. Such application will stay the pending suspension or revocation for a period of seven days. If, due to action by the Government, a hearing is not held within seven days, the suspension shall not take place until such time as the person is granted a hearing and is notified of the action of the installation commander or designee. However, if the affected person requests that the hearing be continued to a date beyond the seven-day period, the suspension or revocation shall become effective immediately on receipt of notice that request for continuance has been granted.

(A) If it is determined as the result of a hearing to suspend or revoke the affected person's driving privilege, the suspension or revocation will become effective immediately upon receipt of the written notification of such action. An individual whose driving privilege is suspended or revoked will have the right to appeal or request consideration per paragraph (b)(4)(v)(B) of this section.

(B) If the revocation or suspension is imposed after such hearing, the person whose driving privilege has been suspended or revoked will have the right to appeal or request reconsideration. Such requests must be forwarded through channels to the installation commander within ten working days from the date the individual is notified of the suspension or revocation action or the result of the administrative hearing. The suspension or revocation will remain in effect pending a final ruling on the request. Requests for restricted privileges will be approved per § 634.2(b)(3) of this section.

(vi) For revocation actions under § 634.2(b)(2)(iii) of this section, the revocation is mandatory upon conviction or other finding that confirms the charge. Such revocations are effective upon receipt of written notice by the individual concerned, and cancel any full or restricted driving privileges that may have been restored pending resolution of charges. Requests for restoration of full driving privileges are not authorized. Requests for restricted driving privileges or probation will be expeditiously acted upon. Approval authority is the General Court-Martial Convening Authority (§ 634.2(b)(3) of this section).

(5) Restoration of Driving Privileges Upon Acquittal. The suspension or revocation of driving privileges will be vacated upon acquittal of drunk driving charges (or other determination which sets aside a finding of "guilty"), or a determination by appropriate officials not to prosecute the charge. In such cases, the affected person must make application for re-registration per § 634.2(a) and 634.3. Acquittal of drunk driving charges will not result in vacation of any suspension or revocation of driving privileges when such action was based on either:

(i) The persons refusal to submit to or complete a lawfully requested test to measure blood alcohol content, after being informed of the consequences of refusal of such test (unless incapable of refusing, as described in § 634.2(b)(5) of this section; or,

(ii) The person driving or being in physical control of a motor vehicle while a suspension or revocation was in effect under §§ 634.2(b)(1)(ii) or 634.2(b)(2)(iii) of this section.

(c) *Reciprocal States—military action.* The military services recognize the primacy of the States in matters pertaining to privately owned motor vehicle administration and driver licensing. In support of these activities and the National Highway Safety Program Standards, the following procedures will be followed at installation/command level:

(1) If statutory authority exists within the host-State for reciprocal suspension and revocation of driving privileges, installation and oversea commanders are authorized and encouraged to enter into agreements with State driver licensing authorities for reciprocal reporting of all moving violations and infractions of motor vehicle laws and regulations for which the driver has been penalized. On receipt of written notification, the receiving party may assess traffic points against individual driving records, and/or suspend or revoke driving privileges to the extent such actions could have been taken if the violation or incident had occurred within the receiving party's respective jurisdiction. (See § 634.6(c)(4) of this section for assessment of traffic points or suspension and revocation of driving privileges by State driver licensing authorities.)

(2) If statutory authority does not exist within the host-State for formal State-military reciprocity:

(i) Commanders will take appropriate action on reports of moving traffic violations, suspensions, or revocations received from State authorities. When State authority suspends or revokes an individual's drivers license, the installation or command driving privilege is automatically terminated. Administrative actions (suspension, revocation and point assessments) for moving traffic violations committed off the installation should not be less than that required for similar offenses if committed on the installation. The installation or oversea commander, when notified of State action, may also suspend or revoke the individual's U.S. Government Motor Vehicle Operator's Identification Card (SF 46). In all cases, however, authorization to drive a Government vehicle will be restricted to the limits of the installation.

(ii) When an individual's installation or command driving privilege is revoked through action initiated by military authority, commanders will transmit such information to the appropriate State licensing authority for their information and action in accordance with the laws applicable to that jurisdiction. Actions reported will include withdrawals of driving privileges because of physical or mental disqualifications, as recommended by a physician. Information furnished to the State will include a complete basis for action. Reporting action may be deferred on those persons who voluntarily submit to approved medical treatment programs for drug abuse or problem drinking, provided close supervision of the individual's activities, including safe operation of a motor vehicle, is prudently exercised.

(d) *Remedial driver training.* (Air Force activities will comply with AFR 50-24; Navy with OPNAVINST 5100.12 series; Marine Corps activities with Marine Corps Order 5100.19A.)

(1) Installation commanders will establish a remedial driver training program to instruct and correct military personnel who have been identified as problem drivers. The selection of personnel to attend remedial driver's training should be based on the information entered on the individual driver's record. The course curriculum should provide, as a minimum, 10 hours of instruction designed to improve driver performance and compliance with traffic laws. Attendance at the remedial training course may be waived in cases of drivers referred to alcohol education classes at installation alcohol and drug centers.

(2) Installation commanders may hold periodic courses of instruction when the establishment of a remedial driving school on a continuing basis is impractical. In localities where civil authorities conduct remedial driver training courses, local arrangements may be made for installation personnel to attend these courses in lieu of courses conducted on military installations.

(3) Civilian personnel employed on the installation, contractor employees, and military dependents may voluntarily attend remedial driver training or similar courses. Driving privileges which have been suspended or revoked may be withheld beyond expiration of the sanction, pending completion of an approved remedial driver training course or alcohol/drug counseling programs.

TABLE 2-1—GUIDE TO ACTIONS ON DRUNK DRIVING-RELATED OFFENSES [1]

	Drunk driving	Refuse BAC test	BAC 0.10 or more [2] irrespective of other charges/convictions
A. Actions Upon Apprehension			
1. Review evidence; suspend driving privileges.	Yes	Yes	Yes, if charged with drunk driving.
		Paragraphs 2-2a(2) and 2-2d(1) and (2).	
2. May request hearing for privileges after suspension [3] (installation commander is approval authority; if privileges are denied, General Court Martial Convening Authority is approval authority for restricted privileges.).	Yes	Yes	Yes.
		Paragraphs 2-2d(3) and 2-2d(4).	
3. Refer to ADAPCP (evaluation, appropriate track) [4].	Yes	Yes	Yes, regardless of charges.
		Paragraphs 4-5f.	
4. Review service record for bar to reenlistment, administrative reduction/discharge.	Yes	Yes	Yes, regardless of charges.
		Paragraphs 4-5h(2).	
B. Actions Upon Conviction/Confirmation			
1. Mandatory 1-year revocation of driving privileges.	Yes	Yes	No.
		Paragraphs 2-2b(3).	
2. May request restricted privileges (General Court-Martial Convening Authority is approval authority).	Yes	Yes	N/A.
		Paragraphs 2-2c(1)(a).	
3. General officer letter of reprimand [4]	Yes	Yes	Yes.
		Paragraphs 4-5h(1).	

NOTES:

[1] Army personnel: offenses on or off installation. Family members/civilians, on installation.

[2] BAC 0.10 or higher, or intoxication level established by other overriding standard.

[3] Hearing must be within 7 working days of receipt of request; decision must be made within 7 working days of hearing or full privileges restored.

[4] Active duty Army only.

§ 634.3 Motor vehicle registration and driver records.

(a) *General.* This chapter prescribes general policies for motor vehicle registration and maintenance of driver records which are uniform among all military departments and the Defense Supply Agency. Specific policies and procedures for registration inspection and marking of privately owned vehicles are contained in applicable separate service directives.

(b) *Policy.* (1) Motor vehicles which are owned by a person who resides, performs duty, is employed on, or frequently uses the facilities of a military installation will be registered in accordance with this regulation as modified by separate service policies.

(2) Vehicles designed exclusively for construction and material handling, vehicles used solely off the traffic way, and bicyles with fractional housepower engines will not be registered.

(3) Commanders are authorized to grant temporary registration for a period not to exceed 30 days pending permanent registration or in other circumstances when deemed appropriate.

(4) Unless security requirements dictate otherwise, valid vehicle registration and decalcomania from other installations/activities of the same service or other services and DSA will be honored at all installations/activities.

(5) Motor vehicles driven by visitors may be issued appropriate locally produced identification media.

(c) *Registration requirements.* Systems for registration of privately owned motor vehicles on military installations will include the following requirements:

(1) Evidence of vehicle ownership and certificate of State registration as may be required by the State in which the vehicle is registered.

(2) Possession of a valid State driver's license.

(3) Certification to the continuing possession of motor vehicle liability insurance in an amount not lower than the minimum limits prescribed by the financial responsibility, or the compulsory law of the State in which the installation is located.

(4) Evidence of satisfactory completion of a safety and mechanical vehicle inspection by State or jurisdiction in which the vehicle is licensed or located. If neither State nor local jurisdiction requires a periodic safety inspection, the establishment of an installation vehicle safety inspection program will be in accordance with separate service policy.

(5) Issue of decalcomania or license plates (oversea areas only) as a means of identifying registered vehicles.

(d) *Termination of registration.* (*1*) Installation/activity or oversea commanders, or their designated representatives, may terminate the registration or deny initial registration whenever:

(i) The owner fails to comply with the registration requirements or conditions (§ 634.3(c) of this section).

(ii) The owner sells or otherwise disposes of the vehicle, is released from active duty, is separated from the service, is transferred to a new duty station, or terminates civilian employment with a military department.

(iii) The owner is other than active military or civilian employee and discontinues regular operation of the vehicle on the installation.

(iv) The owner's State driver's license has been suspended or revoked and/or the installation driving privilege has been revoked. Termination of installation registration in connection with the suspension or revocation of the owner's State driver's license or installation driving privileges are prerogatives of the installation/activity or oversea commanders concerned. The option of continuing registration, if the effect of termination would cause undue hardships on dependents, may be exercised provided that such action does not conflict with the laws of the State in which the installation is located.

(2) Decalcomania used for the identification of registered motor vehicles

will be removed when installation registration is terminated.

(3) Installation registration may be continued in those instances where the service member (sponsor) is transferred to an oversea area and the spouse or other dependents continue to reside in the geographic area contiguous to the installation.

(e) *Driver records.* (1) Applicable service forms will be used to record chargeable motor vehicle traffic accidents, moving violations, suspension or revocation actions, and/or point assessments involving military and civilian personnel and their dependents and other personnel privileged to operate motor vehicles on a military installation.

(2) Driver records will be used as an aid in identification of drivers in need of driver improvement such as counseling and remedial driver training. Records will be forwarded to the next duty station when the service member is transferred.

§ 634.4 Police traffic supervision.

(a) *General.* The safe and efficient movement of traffic on an installation is largely dependent on the effectiveness of police traffic supervision. Principal functions of a police traffic supervision program include planning, supervision and control of motor vehicle traffic, promulgation and enforcement of traffic laws and regulations, and investigation of motor vehicle accidents.

(b) *Traffic planning.* (1) Installation commanders are responsible for the development of traffic circulation plans which provide for the maximum safe and efficient use of roadways and support systems. Circulation plans should be a major consideration in all long-range master planning at installations. Traffic circulation plans are normally developed by the installation law enforcement officer in conjunction with the installation engineer and other appropriate installation and staff agencies. Coordination also must be made with highway engineering representatives of adjacent civil communities to insure that installation traffic circulation plans are compatible with the existing or future circulation plans of the civil community. Plans developed should incorporate as a minimum the following provisions:

(i) Normal and peak load routing based on traffic control studies.

(ii) Effective control over traffic by planned and coordinated traffic direction including contingency measures for special events and adverse road or weather conditions.

(iii) Point control at congested locations by qualified law enforcement personnel and designated traffic directors or traffic wardens, including volunteer trained adults as school crossing or bus guards.

(iv) Judicious use of uniform traffic control signs and devices.

(v) Maximum efficient use of available parking facilities.

(vi) Maximum efficient use of available mass transportation facilities.

(2) The acquisition of factual data pertaining to existing roadways, traffic density and flow patterns, and points of congestion are requisite to the development of sound traffic circulation plans. Data is normally obtained through various traffic control studies conducted by the installation law enforcement officer. This data when properly collected and evaluated can materially assist in determining major and minor routes, location of traffic control devices, and conditions requiring engineering and/or enforcement services.

(3) Traffic engineering services are also available through the Military Traffic Management Command Transportation Engineering Agency (MTMCTEA) to assist installation commanders in the solution of complex on-installation highway traffic engineering problems. These services include reconnaissance traffic engineering studies of limited areas and situations and complete traffic engineering studies of traffic operations of entire installations including long-range planning for future development of installation roads, public highways, and related facilities. Request for traffic engineering services should be submitted per paragraph 5-4, AR55-80/OPNAVINST 11210.1B/AFR 75-88/MCO 11210.2C/DLAR 4500.19 (Highways for National Defense).

(c) *Traffic codes.* (1) Installation or activity commanders will establish a vehicle code applicable to the operation of motor vehicles on the installation. The code will contain a rules of the road section and will, where possible, conform to the code of the state in which the installation is located. In addition, the development and publication of installation traffic codes will be based on:

(i) Highway Safety Program Standards outlined in AR 385-55 (see 23 CFR 1230).

(ii) Applicable portions of the "Uniform Vehicle Code" (UVC) and "Model Traffic Ordinance" (MTO) (see 23 CFR 1204) published by the National Committee on Uniform Traffic Laws and Ordinances, 555 Clark St., P.O. Box 1401, Evanston, IL 60204.

(2) In addition to provisions contained in the Highway Safety Program Standards, and the UVC and MTO, installation traffic codes will contain provisions requiring:

(i) Motorcycles to be operated on roadways with headlights on at all times.

(ii) Operators and passengers of motorcycles to wear approved protective helmets and eye protection devices.

(iii) The wearing of restraint systems by operators and passengers of US Government vehicles, when such equipment is required by law or regulation.

(iv) The wearing of restraint systems by all Army personnel (military or civilian) driving or riding in a POV on Army installations, when such equipment is required by law or regulation (this provision only applies to vehicles manufactured after model year 1966).

(3) In states where traffic law violations are state criminal offenses, such laws are made applicable, under the provisions of 18 U.S.C. 13, to military installations having concurrent or exclusive Federal legislative jurisdiction.

(4) In those states where traffic law offenses cannot be assimilated on the installation under 18 U.S.C. 13 because such traffic law violations are not criminal offenses, such state vehicular and predestrian traffic laws are expressly adopted and made applicable to the military installation under the provisions of DOD Directive 5525.4, 2 November 1981, subject: Enforcement of State Traffic Laws on DOD Installations (32 CFR Part 210). Persons found guilty of violating the vehicular and pedestrian traffic laws made applicable on the installation under provisions of that Directive are subject to a fine of not more than $50.00 or imprisonment for not more than 30 days, or both, for each violation (40 U.S.C. 318c). In those states where state traffic laws cannot be assimilated, an extract copy of this paragraph and a copy of DOD Directive 5525.4 (32 CFR Part 210) should be posted in appropriate places on the installation concerned.

(d) *Traffic law enforcement.* (1) A primary function of traffic law enforcement is to motivate drivers to operate vehicles safely within the framework of traffic laws and regulations. Effective enforcement emphasizes voluntary compliance by drivers and is achieved, in part, by the following actions:

(i) Publishing realistic regulations which can be enforced and which are made known to all affected personnel.

(ii) Utilizing capable and qualified traffic law enforcement personnel.

(iii) Adopting standard signs, markings, and signals that conform to the Manual on Uniform Traffic Control Devices for Streets and Highways.

(iv) Insuring that enforcement personnel establish courteous personal contract with drivers.

(v) Having enforcement personnel act promptly when defects in driving behavior or the equipment of road users are detected.

(vi) Employing speed measuring devices in traffic control studies and enforcement programs, where appropriate.

(vii) Maintaining an aggressive program to detect and apprehend individuals who drive while privileges are suspended or revoked.

(2) Selective and preventive enforcement practices will be employed whenever practicable. Preventive enforcement, the presence or suggested presence of law enforcement personnel at locations where violations, congestion, or accidents frequently occur, is designed to deter traffic violations and reduce accidents. Selective enforce-

ment defines the traffic problem in terms of high frequency violation and accident locations and areas of congestion during selected time periods and applies appropriate enforcement measures to accident-causative violations and conditions. As an enforcement practice, selective enforcement permits maximum effective utilization of law enforcement resources and is therefore endorsed by the military services.

(3) *Traffic violations.* (i) Installation commanders will establish administrative procedures for processing traffic violations. Individuals committing traffic violations on military installations will be issued either an Armed Forces Traffic Ticket (DD Form 1408) or Violation Notice (DD Form 1805) as appropriate.

(A) One copy of the traffic ticket will be forwarded through command channels to the violator's commander, to the commander of the dependent's sponsor, or to a civilian supervisor or employer. Evidence of previous traffic violations committed by the offender, including points previously assessed, will be indicated.

(B) A copy of all violation reports on military personnel and civilian employees of the Government apprehended for driving under the influence of alcohol or drugs will be provided the installation alcohol and drug center.

(C) For those violations requiring a report of action taken, the traffic ticket will be returned to the office of record through such reviewing authority as may be established by the installation commander.

(D) When the report of action taken is received by the office of record, an appropriate entry will be made on the individual's driver record.

(ii) Installation commanders will determine procedures to be used in the disposition of cases involving traffic violations through administrative or judicial action consistent with the provisions of the UCMJ and Federal law. The DD Form 1805 will be used to refer violations of state traffic laws made applicable to the military reservation (Assimilative Crimes, 18 U.S.C. 13) and other violations of Federal law to the US Magistrate in accordance with separate departmental policies.

(e) *Alcohol and drug countermeasures* (1) *Program.* Installation commanders will establish an overall program patterned after the Department of Transportation Alcohol Safety Action Projects (ASAP) to minimize the contribution of alcohol and drugs as causative factors in traffic accidents. The program should emphasize the development and coordination of appropriate countermeasures involving public information and education, enforcement, administration of justice, and rehabilitation and treatment. The program should be evaluated periodically to determine the effectiveness of each element of the overall program.

(2) *Enforcement countermeasures.* These will include as a minimum—(i) Measures for detection, apprehension and testing of personnel who are suspected of driving while under the influence of alcohol or drugs, to include employment of special patrols during periods when driving while under-the-influence violations most frequently occur.

(ii) Training of law enforcement personnel in special enforcement techniques.

(iii) Establishment of blood-alcohol concentration standards.

(iv) Denial of installation driving privileges to personnel whose use of alcohol or other drugs demonstrably jeopardizes their capacity to operate a motor vehicle safely.

(3) *Detection, apprehension and testing.* (i) Law enforcement personnel normally detect drunk driving violators by observing unusual, abnormal, or illegal driver behavior. Drivers exhibiting such behavior will be stopped immediately to determine the cause of the behavior and/or to take appropriate enforcement action. Drivers involved in traffic accidents also should be observed for evidence of sensory impairment.

(ii) When a law enforcement officer reasonably concludes that the individual driving or in control of the vehicle might be impaired, field sobriety tests should be made of that individual. The Alcoholic Influence Report, DD Form 1920, will be utilized by law enforcement agencies in examining, interpreting and recording results of such tests. Installations with existing capabilities are encouraged to use photographs, motion pictures, or video tapes to document the demonstrated condition of individuals apprehended for driving under the influence of intoxicants. If motion picture or video tape recording procedures include voice recording capability, the provisions of paragraph 3-24, AR 190-30, must be complied with.

(iii) Voluntary breath and bodily fluid testing based on implied consent.

(A) *Implied consent.* Under the implied consent policy set out in § 634.2(a)(e) of this Part, any individual who has been stopped, apprehended or cited on a military installation for any offense or incident related to driving a motor vehicle while under the influence of intoxicants is deemed to have given consent to chemical tests, as described in Appendix B, of his or her blood, breath, or urine for the purpose of determining its alcoholic content.

(B) *Procedures.* The law enforcement official relying on implied consent will warn the individual that failure to voluntarily submit to or complete a requested chemical test of his or her breath or bodily fluids may result in the revocation of the privilege to operate a motor vehicle on the installation. Such persons do not have the right to have an attorney present before stating whether he or she will submit to a testing, nor during the administration of the test. Installation commanders will prescribe the type or types of chemical tests which will be administered. Testing will be conducted in accordance with policies and procedures contained in Appendix B. The results of chemical tests administered under the implied consent provisions of this regulation may be used as evidence in courts-martial, nonjudicial proceedings under the UCMJ, administrative actions and civilian courts.

(C) *Refusal.* If an individual suspected of driving while intoxicated refuses the request of an individual law enforcement official to submit to a chemical test, none will be given unless the individual was involved in an accident and the procedures set forth in § 634.4(e)(3)(iv) of this section, are followed.

(iv) Involuntary bodily fluid extraction based upon a valid search and seizure authorization.

(A) *Authorization requirement and procedure.* An individual who does not consent to chemical testing, as described above, may nonetheless be subjected to an involuntary blood (or other bodily fluid) extraction for such testing, only in the following circumstances and only in accordance with the following procedures:

(*1*) Any individual subject to the Uniform Code of Military Justice who was driving a motor vehicle involved in an accident resulting in *death, personal injury, or property damage,* may be subjected to a nonconsensual blood (or bodily fluid) extraction to test for the presence of intoxicants only when there is a probable cause to believe that such an individual was driving or in control of a vehicle while under the influence of an intoxicant. A search authorization by an appropriate commander or a military judge obtained pursuant to Rule 315, Military Rules of Evidence (Manual for Courts-Martial, Chapter XXVII), is required prior to such nonconsensual extraction, unless there is a clear indication that evidence of intoxication will be found, and there is good reason to believe the delay which would result if an authorization were sought could result in the destruction of such evidence. Because such "warrantless" intrusions are subject to close scrutiny by the courts obtaining an authorization is highly preferable, and a "warrantless" intrusion should be conducted generally only after attempts to obtain authorization from an appropriate official prove unsuccessful due to the unavailability of a commander or judge empowered to authorize the extraction.

(*2*) The commander of a medical facility, or his or her delegate, is empowered by Rule 315(d), Military Rules of Evidence, to authorize such extraction from an individual situated in that facility at the time the authorization is sought. In most circumstances, the medical facility commander or his or her delegate authorizing the extraction under Rule 315(d) will not be on duty as the attending physician at the

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facility where the extraction is to be performed; however, in such cases, the actual extraction should be accomplished by other qualified medical personnel. The authorizing official may consider his or her own observations of the individual in determining probable cause. Authorization should not, however, be sought from the commander of the medical facility, or his or her delegate, unless efforts to obtain authorization from a military judge or other appropriate commander prove unsuccessful due to the unavailability of such officials.

(B) *Role of medical personnel.* Authorization for the nonconsensual extraction of blood samples for evidentiary purposes by qualified medical personnel is independent of, and not limited by, provisions defining medical care, such as the provision for nonconsensual medical care pursuant to section IV, Medical Care, Army Regulation 600-20. Extraction of blood will be accomplished by qualified medical personnel (see Mil.R.Evid. 312(g)). In performing this duty, medical personnel are expected to use only that amount of force necessary to administer the extraction. Any force necessary to overcome an individual's resistance to the extraction normally will be provided by law enforcement personnel or by personnel acting under orders from the member's unit commander. All law enforcement and medical personnel will keep in mind the possibility that the individual may require medical attention for possible disease or injury. Nonconsensual extractions of blood will be carried out in a manner that will not interfere with or delay proper medical attention. Medical personnel will determine the priority to be given involuntary blood extractions when other medical treatment is required.

(C) The procedures outlined herein pertain only to traffic incidents. Extractions of body fluids in furtherance of other kinds of investigations are governed by Rule 312(d) of the Military Rules of Evidence and regulatory rules concerning requesting and granting authorizations for searches.

(v) Testing at the request of the apprehended person. Any person lawfully apprehended for an offense allegedly committed while he or she was driving a motor vehicle under the influence of intoxicants may request a chemical test made of his or her blood, breath, or urine for the purposes of determining the alcoholic content of his or her blood, and, if so requested, the apprehending law enforcement officer will make arrangements for the test. A person may, at his or her own expense, have a physician, or qualified technician, chemist, registered nurse, or other qualified person of his or her own choosing, administer a state approved chemical test or tests, in addition to any administered at the direction of an installation law enforcement official. The failure or inability to obtain this additional test shall not preclude the use of the results of the test or tests taken at the direction of a law enforcement official to support actions taken under the provisions of Army regulations or the UCMJ.

(vi) Initiation of revocation procedures. Regardless of whether a nonconsensual test, as authorized in § 634.4(e)(3)(iv) to this section, is authorized and conducted, when a person suspected of driving while intoxicated refuses the request to voluntarily submit to or fails to voluntarily complete a breath or bodily fluid test, the apprehending law enforcement officer will complete a sworn statement describing the events relating to the suspected offense including the refusal to submit to chemical testing (Figure 4-1). The installation commander or his or her designee, upon receipt of the apprehending law enforcement officer's sworn statement, will take action in accordance with the procedures outlined in § 634.2(b)(4) of this Part, to revoke the individual's installation driving privileges (see Table 6-1). Mandatory revocation of the installation driving privilege for refusal to voluntarily submit to or complete a chemical test shall not be a bar to initiating judicial, nonjudicial or administrative action against an individual based on other competent evidence.

(4) *Training.* (i) As a minimum, installation law enforcement personnel will be trained to:

(A) Recognize manifestations of alcohol and drug impairment in connection with motor vehicle operation.

(B) Properly execute the DD Form 1920, Alcoholic Influence Report including the performance and evaluation of appropriate behavioral tests.

(C) Be alert to the possibility that although a person may appear to be intoxicated, he may in fact be physically or mentally ill and in need of prompt medical attention.

(D) Understand the principles of operation of as well as the techniques of using chemical breath screening devices (if employed by installations).

(ii) Each installation employing chemical breath testing devices will insure that personnel selected as operators of chemical breath testing devices possess integrity, maturity and sound judgment and meet certification requirements prescribed in the highway safety program of the state in which the installation is located. Appendix C lists those states which have formal chemical breath testing training programs and have indicated that military personnel are eligible for participation in their programs. Specific information on course dates, costs, and prerequisites for attendance may be obtained by contacting the state agency responsible for the training. Installations located in states where no formal training program exists should consider training personnel at courses offered by selected civilian institutions or by commercial manufacturers of chemical breath testing equipment. Appendix D prescribes minimum course requirements for the training and certification of chemical breath testing operators for CONUS installations and oversea commands located in States/countries not having formal chemical breath training and certification programs who elect not to participate in civilian institution and manufacturers training programs.

(5) *Blood alcohol concentration standards.* (i) As a uniform basis for administrative revocation of driving privileges and/or taking enforcement action against a driver suspected of driving or being in actual physical control of a motor vehicle while under the influence of intoxicating liquor, the amount of alcohol in that person's blood at the time alleged as shown by chemical analysis of his blood, urine, breath or other bodily substance shall give rise to the following presumptions:

(A) If there was at that time 0.05 percent or less by weight of alcohol in the person's blood, it shall be presumed that the person was not under the influence of intoxicating liquor.

(B) If there was at that time in excess of 0.05 percent but less than 0.10 percent by weight of alcohol in the person's blood, such fact shall not give rise to any presumption that the person was or was not under the influence of intoxicating liquor, but such fact may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor.

(C) If there was at that time 0.10 percent or more by weight of alcohol in the person's blood, it shall be presumed that the person was under the influence of intoxicating liquor.

(ii) Percent of weight by volume of alcohol in the blood shall be based on grams of alcohol per 100 milliliters of blood.

(iii) The above standards may be modified to coincide with blood-alcohol concentration standards established by the host-State.

(iv) The adoption of these standards does not preclude the use of other competent evidence bearing on the question whether the person was under the influence of intoxicating liquor. However, use of these standards is required except for those cases in which they specifically conflict with host-country agreements or arrangements. These standards in no way change the rules of evidence in judicial or nonjudicial proceedings under the UCMJ.

(6) Alcoholics, "problem drinkers," and drug abusers. Installation medical authorities will maintain appropriate records to identify persons who are diagnosed by competent medical personnel as alcoholics, "problem drinkers," and drug abusers. Individuals who have exhibited behavior patterns indicative of the use of alcohol or drugs, to the extent which renders them incapable of safely driving a motor vehicle, will be reported to the installation commander or designated representative for appropriate action under this regulation. Active duty Army person-

nel apprehended for drunk driving, on or off the installation, will be referred to the local Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) for evaluation within seven working days to determine if the individual is dependent on alcohol or other drugs, and for enrollment in Track I or other appropriate track. Results of the evaluation will be made available to the commander having jurisdiction over the case prior to adjudication. For problem drinking and alcoholism among Federal civilian employees, 42 USC 4561 authorizes Federal agencies to establish preventive treatment and rehabilitation programs. Supervisors of those civilian employees apprehended for drunk driving will advise employees of ADAPCP services available. Employees apprehended for drunk driving while on duty will be referred to the ADAPCP for evaluation in accordance with AR 600-85. Commanders will ensure that sponsors encourage family members apprehended for drunk driving to seek ADAPCP evaluation and assistance. Installation driving privileges of any person who refuses to submit to chemical testing for blood-alcohol content when apprehended for drunk driving, or convicted for other offenses described in § 632.2(b)(1)(ii) of this part, will not be reinstated unless the person successfully completes either an alcohol education and treatment program sponsored by the installation, state, county, municipality, etc., or private program evaluated as accepted by the installation ADAPCP. The person must also be evaluated by installation alcohol treatment/rehabilitation authorities as sufficiently rehabilitated to no longer pose a high safety risk on the highways. Driving privileges will not be reinstated before the expiration of a mandatory revocation period except as determined by the General Court-Martial Convening Authority.

(7) *Evaluation.* A formal evaluation will be conducted of the enforcement countermeasures program at least annually. All elements of the program will be examined; however, particular attention will be given to determining effectiveness of selective enforcement measures, suspension and revocation actions and chemical breath testing programs in reducing traffic accidents and fatalities.

(8) *Actions against drunk drivers.* Army commanders will take appropriate action against drunk drivers. These actions will include:

(i) A general officer letter of reprimand, administrative in nature, will be given active duty Army personnel in the following cases. Subsequent filing of the letter will be in accordance with the provisions of AR 600-37.

(A) Conviction of driving while intoxicated/drunk driving either on or off the installation.

(B) Refusal of a lawfully requested test to measure blood alcohol content, either on or off the installation, when there is substantial evidence of drunk driving.

(C) Driving or being in physical control of a motor vehicle on post when blood alcohol content is 0.10 percent or higher, irrespective of other charges; or off post when blood alcohol content is in violation of state laws, irrespective of other charges.

(ii) Review by commanders of the service records of active duty Army personnel apprehended for offenses described in (1) above to determine if the individuals warrant:

(A) Administrative reduction per AR 600-200;

(B) Bar to reenlistment per AR 601-280;

(C) Administrative discharge per AR 635-100 or AR 635-200, Chapter 14.

(f) *Traffic accident investigation.* (1) All traffic accidents occurring on a military installation should be investigated provided adequate trained resources are available. However, installation law enforcement personnel will perform detailed on-the-scene and follow-up investigations of the following accidents:

(i) All motor vehicle accidents involving Government vehicles or property on the installation. Whenever practicable, investigations of off-installation motor vehicle accidents involving Government vehicles will be conducted in coordination with the civil police agency having primary jurisdiction.

(ii) Fatal or nonfatal personal injury or disabling property damage accidents involving privately owned vehicles on the installation.

(2) Drivers and/or owners of motor vehicles involved in accidents described in preceding paragraph will immediately notify the installation law enforcement office. Operators of Government vehicles involved in traffic accidents off installations will also notify the police of the jurisdiction in which the accident occurred.

(3) Traffic accident investigation results will be recorded on appropriate departmental forms. Release of information from these reports will be in accordance with separate departmental policies.

(4) In privately owned vehicle accidents occurring on the installation and involving only property damage, not involving Government property and where the vehicle can be normally and safely driven away from the scene, the drivers or owners of the vehicles involved may be required to submit a written report to the installation law enforcement office within 72 hours of the accident. Information contained in these reports may not be used in any criminal proceedings against individuals submitting these reports. (See chapter 10, UVC and applicable State laws concerning duties and responsibilities for reporting of traffic accidents.) Information contained in these reports may not be used in any criminal proceedings against individuals submitting these reports. Each report so submitted will include, as a minimum, the following information relating to the accident:

(i) Location.

(ii) Time.

(iii) Identification of driver(s).

(iv) Identification of pedestrian(s), passenger(s), or pedalcyclist(s).

(v) Identification of the vehicle.

(vi) Direction of travel of each unit.

(vii) Other property involved.

(viii) Environmental conditions existing at the time of the accident, i.e., weather, visibilitly, etc.

(ix) A narrative description of the events and circumstances leading up to the time of impact and immediately after impact.

(5) Data derived from traffic accident investigation reports should be analyzed for the purpose of determining probable causes of accidents, injuries, and deaths. High accident frequency locations should be examined in terms of type of collisions occurring (collision diagram) and physical conditions at the location (condition diagram).

(6) When warranted by accident experience, installation commanders should consider establishing traffic accident review boards comprised of law enforcement, engineer, safety, and medical (behavior and social scientists) representatives to review accidents to determine principal contributing factors to motor vehicle accidents and to recommend appropriate measures to reduce the frequency and/or severity of accidents occurring both on and off the installation.

(7) Traffic accident investigation data in addition to being used to formulate selective enforcement programs should be furnished to installation safety, legal (claims), engineer and transportation offices (if government vehicle is involved) for use in information, education, and traffic engineering activities.

(g) *Parking.* (1) As a basic principle, maximum efficient use of existing on- and off-street parking facilities should be stressed on a nonreserved (first come, first served) basis. Whenever certain reserved or assigned parking requirements are objectively justified, installation commanders are encouraged to use the following priorities as guidelines:

(i) Government motor vehicles used in direct support of installation/departmental missions.

(ii) Government motor vehicles used in general support missions, e.g., couriers, postal, cargo delivery.

(iii) Privately owned vehicles of disabled/handicapped personnel.

(iv) Privately owned vehicles of patrons (including out-patients) and visitors.

(v) Privately owned vehicles of assigned personnel and employees not otherwise accommodated, with preference given to car pools as determined by weights applied to significant factors, e.g. commuting time distances, availability of public transportation and support fringe parking, number of pool members or riders, and years of

Federal service of each participant. Rank or grade may influence qualification for parking by relative weight, but should not be an absolute criterion for determining eligibility.

(2) Reserved parking facilities should be designated as "parking by permit" or numerically by category of eligible parkers. Designation of parking spaces by name, grade, rank, or title will be avoided.

(3) Illegal parking significantly contributes to congestion and impedes traffic flow on an installation. Aggressive enforcement of parking restrictions results in more efficient utilization of available parking facilities and eliminates conditions which contribute to traffic accidents. (See also abandoned property procedures in DOD Directive 4160.21 and separate service regulations or manuals.)

§ 634.5 Off-installation traffic activities.

(a) *Policy.* In areas not under military control the responsibility for maintaining law and order rests with civil authority. The enforcement of traffic laws falls within the purview of this principle. Off-duty or off-installation driving performance, however, is indicative of driving ability and safety consciousness. Accordingly, a system of coordination which facilitates the exchange of information between military and civil authorities will be established. Within the framework of Armed Forces Disciplinary Control Boards (see AR 190-24/MCO 1620.2B/AFR 125-11/COMDINST 1620.1C), major commanders should consider establishment of a central clearing house to process reports of serious traffic violations and accident reports involving persons subject to this regulation which may be received from civil law enforcement agencies.

(b) *Compliance with State laws.* (1) Installation commanders will impress on service members and civilian employees the importance of complying with State and local traffic laws when operating motor vehicles within these jurisdictions. When military necessity requires movement on public roads and highways of Government vehicles that exceed legal limitations or regulations, or that subject highway users to unusual hazards, prior coordination will be effected with the appropriate civil law enforcement agency prior to movement. Procedures for such a movement, which will require special permits to move on public roads and highways, are contained in joint service regulation AR 55-162/OPNAVIST 4600.11D/AFR 75-24/MCO 4643.5C/DLAR 4540.8.

(2) Installation commanders will conduct continuing liasion with civil enforcement agencies to encourage—

(i) Release of an official driver to military authorities, unless his offense is of such a nature as to warrant detention or his condition is such that further operation of a motor vehicle could result in injury to himself or others.

(ii) Prompt notification of military authority in all instances when military personnel or drivers of official military vehicles have been involved in traffic accidents and/or have violated civil traffic laws.

(c) *Civil-military cooperative programs.* (1) *State-Armed Forces Traffic Workshop Program.* This program represents an organized effort to coordinate military and civil traffic safety activities throughout a state or area. Installation commanders will cooperate with state and local officials in this program by providing appropriate support and participation.

(2) *Community-Installation Traffic Workshop Program.* Sound and practical traffic planning depends on the development of a balanced program of traffic enforcement, engineering, and education. Installation commanders should foster a local workshop program as a medium for coordinating the installation traffic efforts with those of local communities. Civilian and military legal and enforcement officers, traffic engineers, safety officials and information officers would normally be expected to participate in such a program.

§ 634.6 Traffic point system.

(a) *Purpose.* The traffic point system provides the military services with an impartial and uniform administrative device for evaluating driving performances of personnel under their jurisdiction. The use of this system is not to be construed as a disciplinary measure or substitute for punitive action. It is not intended to interfere in any way with the reasonable exercise of an installation commander's prerogative to issue, suspend, revoke, or deny installation driving privileges for cause without regard to point assessments made under this chapter.

(b) *Application.* The use of the point system and procedures prescribed is mandatory for the military services and the Defense Logistics Agency. This system is not subject to modification or alteration. The point system applies to military and civilian personnel operating Government vehicles on or off the installation; to military personnel operating privately owned vehicles on or off the installation; and to dependents, civilian employees and all other individuals subject to this regulation operating privately owned vehicles on the installation. Points will be assessed in instances where the individual has been found to have committed a violation by either the unit commander, the civilian supervisor, or a military or civilian court (including a U.S. Magistrate), or upon payment of fine or forfeiture. THE POINT SYSTEM WILL NOT BE USED FOR NONMOVING VIOLATIONS.

(c) *Procedures.* (1) Subject to the foregoing provisions, reports of moving traffic violations will be processed and return endorsements required from commanders or supervisors. Normally, administrative processing and disposition of violations will be accomplished within a 21-day period, inclusive of the date on which the Armed Forces Traffic Ticket (DD Form 1408) was issued by law enforcement personnel.

(2) On receipt of a traffic ticket or other report of a moving traffic violation, the unit commander (or person otherwise designated by the installation commander) will conduct an inquiry and take appropriate disciplinary and/or administrative action. For those cases involving judicial or nonjudicial actions, the report of action taken will not be forwarded until final adjudication.

(3) On receipt of the report of action taken, the installation law enforcement officer will enter the number of points assessed or indicate suspension or revocation of the driving privilege to the individual's driver record as prescribed in table 6-1. Points will not be assessed nor the driving privilege suspended or revoked if the report of action taken indicates that neither disciplinary action and/or administrative action is appropriate, and this finding is approved by the installation commander. In appropriate cases, the commander should consult the installation Staff Judge Advocate before taking such action.

(4) When notified of a conviction or payment of a fine or forfeiture of bond for a traffic violation adjudicated by a state or Federal court, the installation law enforcement officer will assess the appropriate number of points to the individual's driver record and initiate suspension or revocation action when warranted. Points assessed by state driver licensing authorities will be reviewed to insure consistency with the assessement of traffic points in table 6-1 and to preclude duplication of traffic point assessment on the military record for the same violation. The individual concerned will be notified of point assessments by the law enforcement officer through normal channels.

(5) To maximize the effective use of driver improvement actions, installation commanders will require as a minimum the following measures:

(i) Advisory letter sent to the individual on accumulation of six traffic points within a 6-month period.

(ii) Commander counseling or driver improvement interview of the individual on accumulation of more than six but less than 12 traffic points within a 6-month period. Counseling or interview should result in recommendations designed to improve driver performance.

(iii) Referral for medical evaluation when an individual driver, based on reasonable belief, has mental or physical limitations which have had or may have an adverse effect on his driving performance.

(iv) Attendance at remedial driver training following the identification of the individual as a problem driver, or whenever a commander concludes that such treatment may improve the subject's driving performance.

(v) Referral to an alcohol/drug treatment/rehabilitation facility for appropriate counseling services when deemed appropriate. (On Army installations referral will be made in all cases involving driving while intoxicated.)

(6) Individuals whose driving privilege is suspended or revoked (including the accumulation of 12 traffic points within 12 consecutive months, or 18 traffic points within 24 consecutive months) will be notified in writing through official channels of the specific driving privilege withdrawal action as prescribed by § 634.2(b)(4). Except for the mandatory minimum or maximum suspension or revocation periods prescribed by this regulation, the determination of periods of suspension or revocation is the prerogative of the installation commander. The revocation of driving privilege based upon accumulation of traffic points shall be for a period of not less than 6 months. Ordinarily, a longer period of loss of driving privilege should be imposed on the basis of an individual's overall driving record to include frequency, flagrancy, and severity of moving violations and response to previous driver improvement measures. In any case, the individual shall be required to successfully complete a prescribed course in remedial driver training before the privilege is reinstated.

(7) Points assessed against an individual will remain in effect for point accumulation purposes for a consecutive 24-month period, or until separation from the service (not applicable in cases of immediate reenlistment, change of officer component, military retirement and continuation of vehicle registration as retiree or reemployment as a civilian), or final termination of employment, whichever is sooner. The review of driver records in connection with deletion of traffic points should be accomplished routinely as records are required to be handled, i.e., to update data, to record new offenses, to forward to new duty stations, etc. The termination of a revocation period will, of itself, warrant the mandatory removal from the driver record of all points assessed prior to the driving privilege withdrawal action.

(8) Removal of points does not, however, constitute authority to remove driver record entries for moving violations, chargeable accidents, suspensions, or revocations of driving privileges. Driver record entries will remain posted on individual driver records for periods as specified below:

(i) Chargeable nonfatal traffic accidents/moving violations—3 years.

(ii) Nonmandatory suspensions or revocations—5 years.

(iii) Mandatory revocations—7 years.

(9) Procedures will be established to assure prompt notification of the installation law enforcement officer that an individual assigned to or employed on the installation is being transferred to another installation, released from military service, or terminates employment. Where an individual being transferred to a new installation has accumulated point assessments or has other valid entries on his driver record, the driver record will be forwarded to the law enforcement officer of the gaining installation in accordance with appropriate service policies. (Does not apply for personnel being assigned to transfer points/stations immediately prior to discharge or release from active military service, in which case driver records will be destroyed.) Dependent driver records containing traffic point assessments or other entries will also be forwarded to the sponsor's gaining installation. On receipt thereof, records will be analyzed and made available temporarily to the gaining unit commander or supervisor for review. Applicable state driver licensing authorities will be notified concerning the continuation of revocation of driving privileges or restoration of driving privileges by the gaining installation. Points accumulated or entries on the driver record regarding suspensions, revocations, moving violations, or chargeable accidents will not be deleted from individual driver record except as provided in § 634.6(c)(5)(iv) (7) and (8) of this section.

TABLE 6-1—SUSPENSION/REVOCATION OF DRIVING PRIVILEGES/POINT ASSESSMENT FOR MOVING TRAFFIC VIOLATIONS

Part I

Violation	
Driving while drivers license or installation driving privileges are under suspension or revocation.	5 year revocation is mandatory on determination of facts by installation Cdr.
Refusal to submit to chemical tests (implied consent).	1 year revocation is mandatory on determination of facts by installation Cdr.
Manslaughter (or negligent homicide by vehicle) resulting from the operation of a motor vehicle.	1 year revocation is mandatory on conviction.
Driving or being in actual physical control of a motor vehicle while under the influence of intoxicating liquor (0.10% or greater on DOD installations; violation of civil jurisdiction law off post).	
Driving a motor vehicle while an habitual user or under the influence of any narcotic or while under the influence of any other drug to a degree rendering person incapable of safe operation thereof.	
Any felony in the commission of which a motor vehicle is used.	
Fleeing the scene—death, or personal injury (Hit and Run).	
Perjury or making false affidavit or statement under oath to responsible officials or under law or regulations relating to the ownership or operation of motor vehicles.	
Unauthorized use of a motor vehicle belonging to another which act does not amount to a felony.	
Commission of an offense for which mandatory revocation is required on conviction.	Suspension for a period of 6 months or less or revocation for period not to exceed 1 year is discretionary.
Is incompetent to drive a motor vehicle, such as mental or physical impairment (not including alcohol or other drug use).	
Has committed an offense in another state which if committed on the installation would be grounds for suspension or revocation.	
Has permitted an unlawful or fraudulent use of an official driver license.	
Has been convicted of fleeing or attempting to elude a police officer.	
Has been convicted of racing on the highway.	
Second 1-year suspension or revocation of driving privileges within 5 years.	Loss of SF 46 for minimum of 6 months is discretionary.

Violations [2]	Points assessed
Reckless driving (willful and wanton disregard for the safety of persons or property (11-901-UVC))	6
Owner knowingly and willfully permitting another to operate his motor vehicle when physically impaired	6
Fleeing the scene (Hit & Run)—property damage	6
Driving vehicle impaired (consumption of alcohol-more than .05% and less than .10%)	6
Speed contests	6
Exceeded stated speed limit or speed too fast for conditions:	
1 to 10 miles per hour over posted speed limit	3
11 to 15 miles per hour over posted speed limit	4
Over 15 but not more than 20 miles per hour above posted speed limit	5
Over 20 miles per hour above posted speed limit	6
Speed too slow for traffic conditions	3
Following too close	4
Failure to yield right of way to emergency vehicles	4
Failure to stop for school bus or school crossing signals	4
Failure to obey traffic signals, traffic instructions of an enforcement officer or traffic warden, or any official regulatory traffic sign or device requiring a mandatory stop, yield right of way, denial of entry, or required direction of traffic	4
Improper passing	4
Failure to yield (no official sign involved)	4
Improper turning movements (no official sign involved)	3
Improper overtaking	3
Other moving violations (involving driver behavior only)	3
Operating an unsafe vehicle	2
Driver involved in accident is deemed responsible (used only as additive to points assessed for specific offense)	1

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[1] No points assessable in lieu of revocation. Revocation must be based on convictions (Judicial, Nonjudicial).

[2] When two or more violations are committed on a single occasion, assessment of points will be for the one offense having the greater value.

APPENDIX A—EXPLANATION OF TERMS AS THEY PERTAIN TO THIS JOINT SERVICE REGULATION

Alcohol Safety Action Program (ASAP)—A state sponsored program in cooperation with the National Highway Traffic Safety Administration designed to reduce highway deaths, injuries and property damage resulting from motor vehicle traffic accidents in which alcohol is a major contributing factor.

Chemical Breath Testing Device—An instrument which uses photoelectric or other sophisticated physical or chemical methods to quantitatively determine blood-alcohol concentrations. Instruments in this category include but are not limited to the following devices: Alco-Analyzer Gas Chromatograph, Alco-tector, Breathalyzer, Gas Chromatograph Intoximeter, and the Photo Electric Intoximeter.

Collision Diagram—A plan of an intersection or section of roadway on which reported accidents are diagramed by means of arrows showing manner of collision. The date, time of day, and road conditions are entered on one of the arrows representing each collision.

Condition Diagram—A scaled drawing of an intersection or section of roadway showing all objects and physical conditions having a bearing on traffic movement and safety at that location.

Countermeasure—An action undertaken to reduce the incidence of motor vehicle traffic accidents.

Conviction—A final conviction, but also includes an unvacated forfeiture of bail, or collateral deposited to secure a defendant's appearance in court, a plea of nolo contendere accepted by a court, a payment of a fine, a plea of guilty or finding of guilty on a traffic violation charge, regardless of whether the penalty is rebated, suspended or probated. Includes judicial and nonjudicial actions taken under Uniform Code of Military Justice.

Disposable screening device—A device used to conduct a one-time qualitative test of blood-alcohol concentration. The device consists of a small glass tube containing either a column or multiple bands of an alcohol-sensitive reagent and a breath-volume measuring device (balloon, plastic bag or air pump).

Driver—Every person who drives or is in actual physical control of a motor vehicle. A person is considered to be in actual physical control when he is in position to control the motor vehicle, whether to regulate or restrain its operation or movement, for example, sitting in a parked car, keeping it in restraint or in position to control its movement. The term "driver" is used interchangeably with the word "operator."

Driver's license—A license to operate a motor vehicle issued under the laws of a state.

Driving privilege—The privilege extended by an installation commander to an individual permitting the operation of a privately owned motor vehicle within the limits of the installation. This privilege, once extended, is subject to administrative suspension or revocation for cause as determined by the installation commander within the standards set forth in this regulation.

High accident frequency location—A location, intersection or length of roadway not more than one-half mile in length where an excessive number of accidents have occurred.

Law enforcement personnel (officials)—Persons authorized by competent authority to direct, regulate, or control traffic or to make apprehension or arrests for violations of traffic regulations. Personnel so designated normally are identified as military police, security police, or civilian guards or police, and operate under the supervision of the installation law enforcement officer.

Motorcycle—Every motor vehicle having a seat or saddle for use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor.

Motor vehicle—Any vehicle driven or drawn by mechanical power manufacture primarily for use on public streets, roads and highways, except any vehicle operated exclusively on a rail or rails.

Motor vehicle traffic accident (crash)—An unintended event resulting in injury or damage, involving one or more motor vehicles on a highway that is publicly maintained and open to the public for vehicular travel.

Motor vehicle traffic accident classification—The classification of traffic accidents according to severity in terms of degree of injuries or property damage sustained. Major classifications include:

a. Severity according to injury.

(1) *Fatal accident*—A motor vehicle accident that results in fatal injuries (an injury that results in death within 12 months of the motor vehicle traffic accident) to one or more persons.

(2) *Incapacitating injury*—An injury, other than fatal, which prevents the injured person from walking, driving, or normally continuing the activities which he was capable of performing prior to the motor vehicle traffic accident.

Examples. Severe lacerations, broken or distorted limbs, skull fracture, crushed chest, internal injuries, unconscious when taken from the accident scene; unable to leave accident scene without assistance.

(3) *Nonincapacitating evident injury*—An injury, other than fatal and incapacitating, which is evident to any person other than the injured at the scene of the accident.

Examples. Lump on head, abrasions, minor lacerations.

(4) *Possible injury*—An injury reported or claimed which is not a fatal, incapacitating, or nonincapacitating evident injury.

Examples. Momentary unconsciousness; claim of injuries not evident; limping, complaint of pain, nausea, hysteria.

b. Severity according to damage.

(1) Disabling damage is any damage to a motor vehicle such that it cannot be driven or, in the case of trailers, towed from the scene of the accident in the usual manner by daylight after simple repairs, without further damage or hazard to itself, other traffic elements, or the roadway.

(2) Functional damage is any nondisabling damage to a motor vehicle which affects operation of the motor vehicle or its parts.

Examples: Doors, windows, hood, and trunk lids which will not operate properly. Broken glass which obscures vision. Any damage which would prevent the motor vehicle from passing an official motor vehicle inspection.

(3) Other motor vehicle damage is any damage to a motor vehicle which is neither disabling nor functional damage. Such damage usually affects only the load on the motor vehicle or the appearance of the motor vehicle.

Examples. Damage to hubcaps, trim, grill, glass cracks which do not interfere with vision. Dents, scratches, body punctures. Damage to load on motor vehicle.

Motor vehicle registration—The procedures which culminate in the issuance of a registration certificate and registration plates for a motor vehicle under the laws of a State (State registration). The term also applies to the registration form and identification media issued under the provisions of this regulation for a motor vehicle authorized to operate on a military installation.

Moving violation—A violation of any traffic law, ordinance, or regulation which was promulgated primarily with the object of making use of traffic-ways safe. Moving violations typically involve unsafe acts and/or unsafe conditions. Illegal parking is not a moving violation.

(1) *Unsafe act.* An act or omission in traffic which is hazardous.

(2) *Unsafe condition.* Causing or permitting an illegal and possibly hazardous condition of streets or highways used by traffic, vehicles used in traffic, or a pedestrian or driver in traffic.

Pedacycle—A vehicle operated solely by pedals, and propelled by human power.

Pedestrian—Any person not in or on a motor vehicle or other road vehicle.

Reciprocity—Reciprocal action between state and military authority to suspend or revoke an individual's US Government Motor Vehicle Operator's Identification Card installation driving privilege, or state driver's license based on action initiated by either jurisdiction.

Revocation of driver's license—The termination by formal action of state authority of a person's license or privilege to operate a motor vehicle on the public highways, which termination shall not be subject to renewal or restoration except that application may be presented and acted on by the state after the expiration of the applicable period of time prescribed by state law. Such action disqualifies the individual from operating a privately owned motor vehicle on a military installation since he is no longer "licensed" to drive.

Revocation of driver's privilege—Action taken by an installation commander to terminate an individual's privilege to operate a motor vehicle on a military installation. This action precludes renewal or restoration except by application and after the expiration of a specified period of time but not less than 6 months.

State—A constituent unit of the US having a definite territory and governmental organization and includes the District of Columbia, the Commonwealth of Puerto Rico and territories and possessions of the United States as defined in section 101, title 10, United States Code. The term "State" as used herein also refers to a foreign country or to an appropriate political subdivision of a foreign country.

Suspension of driver's license—The temporary withdrawal by formal action (of State authority) of a person's license or privilege to operate a motor vehicle on the public highways, which temporary withdrawal shall be for a period specifically designated. Such action disqualifies the individual from operating a privately owned motor vehicle on a military installation since he is no longer "licensed" to drive.

Suspension of driving privilege—The temporary withdrawal by an installation commander of an individual's privilege to operate a motor vehicle on a military installation for an indefinite period to a maximum of 6 months. Privileges are normally automatically restored on the day following the date the suspension is terminated.

Traffic—Pedestrians, ridden or herded animals, vehicles, streetcars and other conveyances either singly or together while using any highway for the purposes of travel.

Traffic control devices—Signs, signals, markings, lights, and devices placed or erected by an official having jurisdiction for the purposes of regulating, warning, or guiding traffic.

Traffic engineering—That phase of engineering that deals with the planning and geometric design of streets, highways, and abutting lands, and with traffic operations thereon, as their use is related to the safe, convenient, and economic transportation of persons and goods.

Traffic laws—All laws, ordinances, and regulations concerning highway traffic including regulations concerning weight, size, and type of vehicles and vehicle cargo.

US Government Motor Vehicle Operator's Identification Card (SF 46)—An authorization to operate Government-owned vehicles issued under appropriate departmental regulations.

APPENDIX B—CHEMICAL TESTING POLICIES AND PROCEDURES

B-1. General. *a.* Chemical analyses are valid under provisions of this regulation when:

(1) Tests of blood, urine or other bodily substances are performed according to methods prescribed or approved by the departmental Surgeons General or by the designated authority of the state in which the installation is located (for tests conducted outside military jurisdiction).

(2) Breath tests are performed by qualified personnel (see § 634.4(d)(4)(ii) of this part and Appendix D) using a quantitative chemical breath testing device approved by designated authorities of the state in which the installation is located in accordance with procedures established by such authority or as prescribed in paragraph B-2 below.

b. Test results of disposable breath screening devices are not considered sufficiently accurate for use as a basis for administrative or punitive action under this regulation. These devices may, however, be used as a breath screening test to determine if additional quantitative testing is required.

B-2. Chemical breath testing procedures. In the absence of specific state operating procedures for the use of chemical breath testing devices, the following procedures will apply.

a. Quantitative chemical breath testing devices.

(1) Observe person to be tested for at least 20 minutes prior to collection of the breath specimen, during which period the person must not have ingested alcoholic beverages or other fluids, regurgitated, vomited, eaten or smoked.

(2) Verify calibration and proper operation of the instrument by use of a control sample immediately prior to the test.

(3) Comply with operational procedures set forth in the current instructional manual of the manufacturer for the instrument in use.

(4) Perform preventive maintenance in accordance with procedures recommended in the manufacturers current instructional manual.

b. Disposable screening devices will be utilized in accordance with operating instructions issued by the manufacturer.

B-3. Chemical tests of personnel involved in fatal accidents. *a.* Installation medical authorities will immediately notify the installation law enforcement officer of the death of any person as a result of an accident involving a motor vehicle and the circumstances surrounding such accident.

b. In the case of drivers killed in motor vehicle accidents and the death of pedestrians subject to military jurisdiction, or other pedestrians 16 years or older when consent of the sponsor is obtained, medical authorities will, within 8 hours after such death, examine the body and make such tests as are necessary to determine the presence and percentage concentration of alcohol, and drugs, if feasible, in the blood or other fluids of the victim. This information shall be included in each report submitted pursuant to *a* above.

c. To the extent provided by law, and medical conditions permitting, a blood or breath sample will be obtained from any surviving operator whose motor vehicle is involved in a fatal accident.

B-4. Medical considerations. *a.* Persons afflicted with hemophilia or a heart condition requiring an anticoagulant shall not be administered a blood test to determine blood-alcohol concentration for purposes of this regulation.

b. In the event that a quantitative chemical breath test of a subject indicates a blood-alcohol concentration of .35 percent or above, a second test should be administered after a waiting period of 20 minutes. If the second test indicates a continuing rise, the subject will be immediately referred to the installation medical facility.

c. If a quantitative chemical breath test of a subject indicates blood-alcohol concentration of .05 percent or less and there is evidence of strong physical impairment, the individual should be referred for medical evaluation and treatment as appropriate.

d. If a subject is taken to the installation medical facility because of either a high or low blood-alcohol concentration (quantitative testing devices only), the results of chemical breath tests will be provided the attending physician for diagnostic purposes.

B-5. Technical assistance to civil authorities. Widespread adoption of "implied consent" chemical testing, and the establishment of Alcohol Safety Action Projects, nationwide, under the Highway Traffic Safety Program, may necessitate in the interest of public safety, technical assistance and cooperation from installation law enforcement officers to civil law enforcement agencies in certain type situations. Whenever a member of the military, an operator of a government vehicle, or resident of the military installation, is a suspect drunken driver in an off-base incident and subsequently returns or is evacuated to military control or property jurisdiction, the following action will be taken:

a. Civilian authorities will be given immediate access to the suspect drunken driver and be given the opportunity to invoke "implied consent" and conduct appropriate testing authorized under state law if medical condition of the driver permits such. If the state conducts a test military authorities will request results of such testing for identification purposes as specified in § 634.4(e).

b. Should civilian authorities fail to request access to the suspect driver for testing purposes, military authorities should conduct testing and report the results to the installation commander or the commander's designee under the provisions of § 634.4(e)(6). Incidental to such testing, the results of such testing or a portion of the blood or urine sample may be furnished to civilian authorities upon their request. Prior to conducting tests under this subparagraph, the suspect driver will be informed that the primary purpose of this testing is to identify potential problem drivers but that the results of such testing or a portion of a sample taken may be furnished to civilian authorities on their request.

APPENDIX C—STATE CHEMICAL BREATH TESTING TRAINING PROGRAMS

The following states are reported to have formal chemical breath testing training programs and currently authorize military personnel to attend their courses of instruction.[1] Information concerning course dates, costs, prerequisites and scope of instruction may be obtained by contacting the appropriate state agency as indicated below:

State	Principal device(s) used	Contact
Alaska	Breathalyzer	Commissioner Pouch N—State Capitol Juneau, Alaska 99801
Alabama	Photo-Electric Intoximeter.	Director, Dept of Public Safety State of Alabama 500 Dexter Ave Montgomery, AL 36102
Arizona	Breathalyzer, Photo-Electric Intoximeter.	Arizona State Dept of Health 1634 W Adams Phoenix, AZ 85005
Arkansas	Breathalyzer, Intoximeter, Gas Chromatograph.	State Law Enforcement Training Academy Little Rock, AR 72203
Florida	Breathalyzer	Florida State Dept of Education Industrial Education Section Tallahassee, FL 32304
Georgia	Photo-Electric Intoximeter.	Associate Director Department of Public Health State of Georgia Atlanta, GA 30301
Hawaii	Breathalyzer	Training Division Police Department City & County of Honolulu Honolulu, Hawaii 96814
Illinois	Breathalyzer, Intoxilyer.	Director Information & Education Section Illinois State Police Armory Bldg Springfield, IL 62706
Iowa	Gas Chromatograph.	Iowa Highway Patrol Lucas Bldg Des Moines, IA 50319
Kentucky	Breathalyzer	Director Traffic Safety Institute Eastern Kentucky University Richmond, KY 40475
Maryland	Breathalyzer	Chemical Test Section Maryland State Police Pikesville, MD 21208
Massachusetts.	Breathalyzer, Alco-Tector.	Department of Public Safety Massachusetts State Police Traffic Section 1010 Commonwealth Ave Boston, MA 02215
Michigan	Breathalyzer	Commanding Officer Safety and Traffic Division Dept of State Police 714 S Harrison Rd East Lansing, MI 48823
Minnesota	Breathalyzer	Project Dir of Chemical Testing Program Toxicologist, Dept of Public Safety, Bureau of Criminal Apprehension Laboratory 1246 University Ave St Paul, MN 55104
Missouri	Breathalyzer	Missouri State Highway Patrol Dir of Personnel & Training PO Box 568 Jefferson City, MO 65101
Montana	Gas Chromatograph.	Montana Law Enforcement Academy of State Univ Bozeman, MT 59715
New Jersey.	Breathalyzer	Commanding Officer Dept of Law & Public Safety ATTN: Breath Test Unit PO Box 68 West Trenton, NJ 08625
New York	Breathalyzer	Superintendent of State Police State Campus Albany, NY 12226
North Carolina.	Breathalyzer, Intoximeter.	Director, North Carolina Dept of Community Colleges ATTN: Law Enforcement Tng Raleigh, NC 27611
North Dakota.	Breathalyzer	State Toxicologist North Dakota State Univ Fargo, ND 58102
Pennsylvania.	Breathalyzer	Director, Bureau of Tng and Education Pennsylvania State Police Harrisburg, PA 17123
Rhode Island.	Breathalyzer	Rhode Island Dept of Health Providence, RI 02903
South Carolina.	Breathalyzer	Director, SC Law Enforcement Div South Carolina Highway Patrol Columbia, SC 29203
South Dakota.	Breathalyzer, Gas Chromatograph.	Coordinator for Law Enforcement/Driver Control Programs Box 141 Huron, SD 57350
Tennessee	Gas Chromatograph.	Commanding Officer Tennessee Highway Patrol Nashville, TN 37209
Utah	Breathalyzer	Superintendent Utah Highway Patrol 317 State Office Bldg Salt Lake City, UT 84114
Vermont	Gas Chromatograph.	Commissioner, Dept of Public Safety Montpelier, VT 05602

State	Principal device(s) used	Contact
Washington.	Breathalyzer	State Training Academy Washington State Patrol Olympia, WA 98504
Wisconsin	Breathalyzer	Wisconsin State Patrol Academy Camp McCoy, WI 54656
Wyoming	Breathalyzer, Alco-Analyzer.	Dept of Public Health Laboratory Service Section Cheyenne, WY 82001

[1] Based on DAPM survey of state chemical breath testing programs, 28 Mar 72.

APPENDIX D—CHEMICAL BREATH TESTING, TRAINING, AND CERTIFICATION REQUIREMENTS

D-1. General. This appendix establishes minimum training and certification requirements for personnel selected as chemical breath testing operators to meet standards established by National Highway Traffic Safety Administration, U.S. Department of Transportation. The requirements are applicable to training programs established at CONUS installations and overseas commands located in States/countries not having a formal chemical breath testing and certification program and when training requirements can not be satisfied at courses conducted at civilian institutions or by manufacturers of chemical breath testing equipment. The requirements established herein apply to operators of quantitative chemical breath testing devices.

D-2. Training course. *a. Objectives.*

(1) Develop skill in the operation of a precision breath testing instrument and an understanding of the operational principles and design/functional features.

(2) Provide an understanding of the technical, historical and legal background surrounding chemical testing.

(3) Provide an understanding of the procedures for processing the suspect, gathering and recording of evidence, and maintaining the chain of evidence.

(4) Develop basic skills in testifying in court regarding observations of and tests performed on the suspect.

b. Course content. The course will consist of a minimum of 44 hours of classroom and laboratory training including review stations and examinations. Subjects and the number of hours allotted for each subject are as follows:

	Time (hrs.)
Group I Course Background, Suspect Processing and Court Testimony:	
1. Course overview	1
2. The drinking driver problem and related countermeasures	1
3. Basics of chemical testing	1
4. Units of measurement	1
5. Alcohol properties and production	1
6. Physiology of alcohol	1
7. Pharmacology of alcohol	1
8. Suspect processing procedures	3
9. Drinking driving statutes and related regulations	3
10. Preparation and presentation of courtroom evidence	3
Group II 11. Equipment theory and operation:	
Part I	2
Part II	3
12. Laboratory—testing known samples	2
13. Laboratory—testing unknown samples	2
14. Laboratory—testing drinking subjects (two 4-hour sessions)	8
Group III 15. Review (including quiz and review sessions and a final review session—a minimum of five 1-hour sessions)	5
16. Final written examination	2
17. Final practical examination	2

D-3. Course materials. *a.* The above course is based on the "Basic Training Program for Breath Examiner Specialists" prepared for the National Highway Traffic Safety Administration by Dunlap and Associates, Inc.

b. The basic working documents produced as a part of the course are a *Course Guide,* developed to aid in the organization and conduct of the training, the *Instructor's Lesson Plans,* prepared to assist the instructor in conducting each lesson, and the *Student Study Guide,* designed to serve as a basic reference source for the trainee. The course is designed to cover any one of the following five principal breath testing devices used by law enforcement agencies:

(1) Alco-Analyzer Gas Chromatograph (Luckey Laboratories, Inc).

(2) Alco-Tector (Decatur Electronics, Inc).

(3) Breathalyzer (Stephenson Corporation).

(4) Gas Chromatograph Intoximeter (Intoximeter, Inc).

(5) Photo-Electric Intoximeter (Intoximeter, Inc).

c. Course materials are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402:

Publication	Stock No.	Cost
Course Guide	5003-0046	$0.60
Student Study Guide	5003-0045	1.00
Instructor's Lesson Plans [1]	5003-0044	3.00

[1] When ordering Instructor Lesson Plans, requestors should indicate the type equipment being used by the installation/command.

D-4. Recertification. Refresher training consisting of classroom instruction and laboratory practical work is required every 18 months to assure that operators maintain skills and are brought up to date on the newest information relative to alcohol and chemical testing. Satisfactory completion of a written and practical examination administered as a part of the refresher training are required for recertification.

SUBCHAPTER J—REAL PROPERTY

PART 641—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES

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AUTHORITY: 5 U.S.C. 301; sec. 213, Pub. L. 91-646, 84 Stat. 1894, 1900 (42 U.S.C. 4601, 4633).

SOURCE: 38 FR 14239, May 31, 1973, unless otherwise noted.

Subpart A—General

POLICIES AND GENERAL INSTRUCTIONS

§ 641.1 Purpose.

To establish policy and guidance for implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646; 84 Stat. 1894), hereinafter referred to as the Act, to assure fair, equitable, and uniform treatment of persons displaced by Federal and federally assisted programs for which the Corps of Engineers has responsibility. All references in this regulation to sections or subsections are references to sections or subsections of the Act.

§ 641.2 Applicability.

This part is applicable to the Office of the Chief of Engineers (OCE) and to all Division and District Engineers having real estate responsibilities.

It will also be applied to activity on behalf of any client agency for which the Corps serves as real estate agent, unless otherwise agreed with the client agency.

[38 FR 14239, May 31, 1973, as amended at 44 FR 16910, Mar. 20, 1979]

§ 641.3 References.

(a) AR 405-10.

(b) ER 405 series of regulations.

(c) Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646 approved January 2, 1971; 84 Stat. 1894), (Appendix A).

(d) Title VI of the Civil Rights Act of 1964; title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284).

§ 641.4 Basic policy and procedural requirements.

Procedures, policies, and forms prescribed in the ER 405 series of regulations relating to the acquisition of real property and interests therein will be followed except as they may be modified by the requirements of the Act and this regulation.

(a) A written notice of intention to acquire must be given to each individual family, business or farm operation to be displaced. Such notice shall be served personally or by certified (or registered first-class mail at the earliest possible time.

(b) In order to qualify for benefits under title II of the Act, as a displaced person, either of two conditions must be fulfilled:

(1) The person must have moved (or moved his personal property) as a result of the receipt of a written notice to vacate which notice may have been given before or after initiation of negotiations for acquisition of the property as prescribed by regulations. (When negotiations are initiated prior to issuance of a written notice, all persons contacted should be advised that the benefits of the Act are available only when the person moves subsequent to receipt of a written notice); or

(2) The subject real property must, in fact, have been acquired, and the person must have moved as a result of its acquisition (except in those instances covered by sections 217 and 219 of the Act). A move made after acceptance of an offer to sell (contract of purchase) but before closing is a move made as the result of acquisition of subject property.

(c) In addition, certain of the benefits provided by title II of the Act are available as follows:

(1) Whenever the acquisition of, or notice to move from, real property used for a business or farm operation causes any person to move from the other real property used for his dwelling, or to move his personal property from such other real property, such person may receive the benefits provided by sections 202 (a) and (b) and 205 of the Act.

(2) If it is determined that any person occupying property immediately adjacent to the real property acquired is caused substantial economic injury because of the acquisition, the District Engineer may offer such person relocation advisory services under section 205(c) of the Act.

(d) For real property acquisitions under Federal law, contracts or options to purchase real property shall not incorporate provisions for making payments for relocation costs and related items in title II of the Act. Appraisers shall not give consideration to, nor include in their real property appraisals, any allowances for the benefits provided by title II. In the event of condemnation with a declaration of taking, the estimated compensation shall be determined solely on the basis of the appraised value of the real property with no consideration being given to or reference contained therein to the payments to be made under title II of the Act. Insofar as practicable, a person negotiating for the acquisition of real property will not negotiate the relocation benefits to which a displaced person may be entitled.

(e) Applications for benefits under the Act are to be made within 18 months from the date on which the displaced person moves from the real property acquired or to be acquired; or the date on which the displacing agency makes final payment of all costs of that real property, whichever is the later date. Final payment of all costs includes satisfaction of awards in condemnation proceedings. The Chief of Engineers may extend this period upon a proper showing of good cause.

(f) A displaced person who makes proper application will be paid promptly after a move and, in hardship cases, may be paid in advance.

(g) The provisions of the Act apply to the acquisition of all real property for, and the relocation of, all persons displaced by Federal programs and projects undertaken by State agencies which receive Federal financial assistance for all or part of the cost. It is immaterial whether the real property is acquired by a Federal or State agency or whether Federal funds contribute to the cost of the real property.

(h) The availability of relocation benefits in leasehold cases under Title II of the Act depends upon the circumstances under which the leasing action takes place. Persons vacating as the result of a Government order to vacate, a lease construction project, or the condemnation of a leasehold interest are entitled to benefits under Title II. The provisions of Title II do not apply to leasehold cases under any other circumstances.

[38 FR 14239, May 31, 1973, as amended at 39 FR 10124, Mar. 18, 1974; 43 FR 41974, Sept. 19, 1978]

§ 641.5 Review of activities for compliance with titles II and III.

The District Engineer shall provide for the periodic review of all Federal and federally assisted programs for which he is responsible to insure compliance with the provisions of titles II and III of the Act.

§ 641.6 Public information.

The District Engineer shall insure that the public receives adequate knowledge of programs involving relocations and that persons to be displaced be fully informed, at the earliest possible time, of such matters as the relocation payments and assistance available; the specific plans and procedures for assuring that suitable replacement housing will be available for homeowners and tenants, in advance of displacement; the eligibility requirements and procedures for obtaining such payments and assistance; and the right of administrative review by the Chief of Engineers.

§ 641.7 Effective date.

The Act became effective January 2, 1971, and applies to all persons who moved after that date from real property acquired by the Government for public use.

§ 641.8 Repeal of laws.

The Resettlement Act, 10 U.S.C. 2680, and section 301 of the Land Acquisition Policy Act of 1960, 33 U.S.C. 596, were repealed by the Act.

§ 641.9 Benefits to be determined as of date of vacation.

Where a former owner or tenant does not vacate the acquired property immediately, or such property is leased to a former owner or tenant, relocation rights will be computed as of the time the property is vacated which, under Corps policy, is not later than 2 years from the date of acquisition. Former owners and tenants of property acquired before January 2, 1971, who move therefrom after that date are limited to benefits under sections 202 and 204, Pub. L. 91-646. No benefits shall be paid under section 203 to any person whose property was acquired prior to January 2, 1971.

DEFINITIONS

§ 641.21 The Act.

"The Act" means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

§ 641.22 District Engineer.

The term "District Engineer" as used in this regulation means any District Engineer or his Chief of Real Estate, or where the Division Engineer handles real estate on a centralized basis, the Division Engineer or his Chief of Real Estate.

§ 641.23 Federal agency.

The term "Federal agency" means any department, agency, or instrumentality in the executive branch of the Government (except the National Capital Housing Authority), any wholly owned Government corporation (except the District of Columbia Redevelopment Land Agency), and the Architect of the Capitol, the Federal Reserve Banks, and branches thereof.

§ 641.24 State/State agency.

The term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, the Trust Territories of the Pacific Islands, and any political subdivision thereof. The term "State agency" means the National Capital Housing Authority, the District of Columbia Redevelopment Land Agency, and any department, agency, or instrumentality of a State or of a political subdivision of a State, or any department, agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States.

§ 641.25 Displacing agency.

The term "displacing agency" means a Federal agency in the case of a direct Federal project or a State agency in the case of a project receiving Federal financial assistance.

§ 641.26 Federal financial assistance.

The term "Federal financial assistance" means a grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance and any annual payment or capital loan to the District of Columbia.

§ 641.27 Person.

The term "person" means any individual, partnership, corporation, or association.

§ 641.28 Displaced person.

The term "displaced person" means any person who, on or after January 2, 1971, moves from real property, or moves his personal property from real property as a result of acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency, or with Federal financial assistance; and solely for the purposes of sections 202 (a) and (b) and 205 of the Act, as a result of the acquisition of or as the result of the written order of the acquiring agency to vacate other real property, on which such person conducts a business or farm operation, for such program or project.

§ 641.29 Family.

A "family" means two or more individuals who are related by blood, adoption, marriage, or legal guardianship who live together as a family unit. However, if the District Engineer considers that circumstances warrant, others who live together as a family unit may be treated as if they were a family for the purpose of determining benefits under title II of the Act.

§ 641.30 Business.

The term "business" means any lawful activity, excepting a farm operation, conducted primarily:

(a) For the purchase, sale, lease, and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

(b) For the sale of services to the public;

(c) By a nonprofit organization; or

(d) Solely for the purposes of section 202(a) of the Act, for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted. For the purpose of section 202(c) of the Act, where a warehouse or other storage facility operated in conjunction with a business is acquired by the Government and the business is not so acquired, the warehouse or storage facility is not considered to be a business. An example is a warehouse owned by a furniture store. A lot for the storage of automobiles, which was acquired, and the related car sales business or garage which was not acquired would fall in the same category.

§ 641.31 Farm operation.

The term "farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

§ 641.32 Mortgage.

The term "mortgage" means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the State in which the real property is located, together with the credit instruments, if any, secured thereby.

§ 641.33 Dwelling.

"Dwelling" means the place of permanent or customary and usual abode of a person. It includes a single-family building; a unit of a condominium or cooperative housing project; any other residential unit, including a mobile home which is either considered to be real property under State law, or cannot be moved without substantial damage or unreasonable cost or is not a decent, safe, and sanitary dwelling.

[40 FR 27937, July 2, 1975]

§ 641.34 Owner.

"Owner" means a person who holds fee title, a life estate, a 99-year lease, or an interest in a cooperative housing project which includes the right of occupancy of a dwelling unit, or is the contract purchaser of any such estates or interest, or who is possessed of such other proprietary interest in the property acquired as, in the judgment of the District Engineer, warrants consideration as ownership. In the case of one who has succeeded to any of the foregoing interests by devise, bequest, inheritance, or operation of law, the tenure of ownership, not occupancy, of the succeeding owner shall include the tenure of the preceding owner.

§ 641.35 Financial means.

Section 205(c)(3) requires that the replacement dwelling is within the financial means of the displaced individual or family. In making this determination, the average monthly rental or housing cost (e.g., monthly mortgage payments, insurance for the dwelling unit, property taxes, and other reasonable recurring related expenses) which the displaced person will be required to pay, in general, should not exceed 25 percent of the monthly gross income or the present ratio of housing payment to the income of the displaced family or individual, including supplemental payments made by public agencies.

Subpart B—Assurance of Adequate Replacement Housing Prior to Displacement

§ 641.51 Assurance of availability.

(a) *Availability.* District Engineers may not proceed with any phase of a project or authorize a State agency to proceed with any phase of a project which will cause the displacement of any person until it has been determined, or until satisfactory assurances have been received from the displacing State agency, that within a reasonable period of time prior to displacement, there will be available on a basis consistent with the requirements of title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284), in areas generally not less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced, decent, safe, and sanitary (hereinafter DSS) dwellings, equal in number to the number of, and available to, such displaced persons who require such dwellings and reasonably accessible to their places of employment.

(b) *Support.* The determination or assurances shall be based on a current survey and analysis of available replacement housing by the District Engineer. Such survey and analysis must take into account the competing demands on available housing.

(c) *Waiver.* In accordance with section 205(c)(3), the Chief of Engineers may authorize the waiver of the assurances. This will be done on a case by case basis. Waivers shall be limited only to emergency or other extraordinary situations where immediate possession of real property is of crucial importance. Each waiver of assurance of replacement housing shall be supported by appropriate findings and a determination of the necessity for the waiver. Determinations so made shall be included in the annual report required by section 214.

(d) *Decent, safe, and sanitary housing.* A DSS dwelling is one which is found to be in sound, clean, and weather-tight condition, and which meets local housing codes. District Engineers shall be governed by the following criteria in determining if a dwelling unit is DSS. Adjustments may only be made in the cases of unusual circumstances or in unique geographical areas.

(1) *Housekeeping unit.* A housekeeping unit must include a kitchen with fully usable sink; a cooking stove, or connection for same; a separate complete bathroom; hot and cold running

water in both the bathroom and the kitchen; an adequate and safe wiring system for lighting and other electrical services; and heating as required by climatic conditions and local codes.

(2) *Nonhousekeeping unit.* A nonhousekeeping unit is one which meets local code standards for boarding houses, hotels, or other congregate living. If local codes do not include requirements relating to space and sanitary facilities, standards will be subject to the approval of the District Engineer.

(3) *Occupancy standards.* Occupancy standards for replacement housing shall comply with Federal agency approved occupancy requirements or comply with local codes.

(4) *Absence or inadequacy of local standards.* In those instances where there is no local housing code or a local housing code does not contain certain minimum standards or the standards are inadequate, the Chief of Engineers, based on recommendations of the District Engineer, will establish such standards.

§ 641.52 Housing provided as a last resort.

When it is determined that adequate replacement housing is not available and cannot otherwise be made available, District Engineers will report the facts to the Chief of Engineers with recommendations. Such housing will be provided by the Government as a last resort.

§ 641.53 Loans for planning and preliminary expenses.

When contemplating loans for planning and other preliminary expenses authorized under section 215, District Engineers will report the facts to the Chief of Engineers with recommendations. This provision also applies in connection with federally assisted projects.

Subpart C—Moving and Related Expenses

§ 641.61 Eligibility.

(a) Any displaced person (including one who conducts a business or farm operation) is eligible to receive a payment for moving expenses. A person who lives on his business or farm property may be eligible for both moving and related expenses as a dwelling occupant in addition to being eligible for payments with respect to displacement from a business or farm operation.

(b) Any person who moves from real property or moves his personal property from real property as a result of the acquisition of such real property, in whole or in part, or as a result of a written notice of the acquiring agency to vacate real property, or solely for the purpose of section 202 (a) and (b) as a result of the acquisition of, or a written notice of the acquiring agency to vacate other real property on which such person conducts a business or farm, is eligible to receive a payment for moving expenses.

§ 641.62 Actual reasonable expenses in moving.

(a) *Allowable moving expenses.* (1) Transportation of individuals, families, and personal property from the acquired site to the replacement site, not to exceed a distance of 50 miles, except where the District Engineer determines that relocation beyond the 50-mile area is justified. The circumstances justifying the moving expenses exceeding the 50-mile limitation should be made a part of the record.

(2) Packing and unpacking, crating and uncrating of personal property.

(3) Advertising for packing, crating, and transportation when the District Engineer determines that it is necessary.

(4) Storage of personal property for a period generally not to exceed 12 months when the District Engineer determines that storage is necessary in connection with relocation.

(5) Insurance premiums covering loss and damage of personal property while in storage or transit.

(6) Removal, reinstallation, reestablishment, including such modification as deemed necessary by the District Engineer, and reconnection of utilities for machinery, equipment, appliances, and other items, not acquired as real property. Prior to payment of any expenses for removal and reinstallation of such property, the displaced person shall be required to agree in writing

that the property is personalty and that the Government is released from any payment for the property.

(7) Property lost, stolen, or damaged (not caused by the fault or negligence of the displaced person, his agent or employees), in the process of moving, where insurance to cover such loss or damage is not available.

(8) Payment not to exceed $100 for time lost from employment to supervise hired movers.

(9) In cases of emergency dislocation where permanent replacement housing is not immediately available in the area, all reasonable costs incurred in moving to and occupying temporary housing.

(10) Such other reasonable expenses which, in the opinion of the District Engineer, were necessarily incurred by the displaced person.

(b) *Limitations.* (1) When the displaced person accomplishes the move himself, the amount of payment shall not exceed the estimated cost of moving commercially, unless the District Engineer determines a greater amount is justified.

(2) When an item of personal property which is used in connection with any business or farm operation is not moved but sold and promptly replaced with a comparable item, reimbursement shall not exceed the replacement cost minus the proceeds received from the sale, or the estimated cost of moving, whichever is less.

(3) When personal property which is used in connection with any business or farm operation to be moved is of low value and high bulk, and the cost of moving would be disproportionate in relation to the value, in the judgment of the District Engineer, the allowable reimbursement for the expense of moving the personal property shall not exceed the difference between the amount which would have been received for such item on liquidation and the cost of replacing the same with a comparable item available on the market. This provision will be applicable in the case of moving of junkyards, stockpiled sand, gravel, minerals, metals, and other similar type items of personal property.

(4) If the cost of moving or relocating an outdoor advertising display or displays is determined to be equal to, or in excess of, the in-place value of the display, consideration should be given to acquiring such display or displays as a part of the real property, unless such acquisition is prohibited by State law.

[38 FR 14239, May 31, 1973, as amended at 44 FR 16910, Mar. 20, 1979]

§ 641.63 Nonallowable moving expenses and losses.

(a) Additional expenses incurred because of higher cost of living in a new location.

(b) Cost of moving structures or other improvements as to which the displaced person reserved removal rights, except as otherwise provided by law.

(c) Improvements to the replacement site, except when required by law in connection with the movement and reinstallation of personal property referred to in § 641.62(a)(6).

(d) Interest on loans to cover moving expenses.

(e) Loss of goodwill.

(f) Loss of profits.

(g) Loss of trained employees.

(h) Personal injury.

(i) Cost of preparing the application for moving and related expenses.

(j) Payment for search cost in connection with locating a replacement dwelling.

[38 FR 14239, May 31, 1973, as amended at 43 FR 41974, Sept. 19, 1978]

§ 641.64 Reasonable expenses in searching for replacement business or farm.

(a) *Allowable.* (1) Actual reasonable travel costs.

(2) Extra costs for meals and lodging.

(3) Time spent in searching at the rate of the displaced person's salary or earnings, but not to exceed $10 per hour.

(4) In the discretion of the District Engineer, broker, real estate, or other professional fees deemed necessary to locate a replacement business or farm operation.

(b) *Limitation.* The total amount a displaced person may be paid for searching expenses may not exceed $500 unless the Chief of Engineers determines that a greater amount is justified based on the circumstances involved. A discussion of any special circumstances which warrant a search for replacement properties over a wider area than a 50-mile radius will be included with submission to the Chief of Engineers.

[38 FR 14239, May 31, 1973, as amended at 44 FR 16910, Mar. 20, 1979]

§ 641.65 Actual direct losses by business or farm operation.

When the displaced person does not move personal property, he shall be required to make a bona fide effort to sell it, and shall be reimbursed for the reasonable costs incurred.

(a) When the business or farm operation is discontinued, the displaced person is entitled to the difference between the fair market value of the personal property for continued use at its location prior to displacement and the sale proceeds, or the estimated cost of moving 50 miles, whichever is less.

(b) When the personal property is abandoned, the displaced person is entitled to payment for the fair market value of the property for continued use at its location prior to displacement or the estimated cost of moving 50 miles, whichever is less.

(c) The cost to the Government of removal of the personal property shall not be considered as an offsetting charge against other payments to the displaced person.

Subpar —Payments in Lieu of Moving and Related Expenses

§ 641.81 Dwellings—moving expense schedules; dislocation allowance.

(a) Subsection 202(b) provides that at the option of the displaced person he may receive a moving expense allowance not to exceed $300 based on schedules established by each agency head. District Engineers will use the moving allowance schedules maintained by the respective State highway departments as the basis for such schedules. These schedules shall provide for adequacy of reimbursement in every locality. The Federal Highway Administration is required to maintain all schedules on a current basis and such schedules are normally available upon request.

(b) Where there are no highway department schedules, the District Engineer will join with other Federal agencies causing displacement in such areas in the development of a single moving expense schedule for the use of all displacing agencies.

(c) A displaced person, who elects to receive a payment based on a schedule, shall be paid a sum not to exceed $300 under the schedule used in the jurisdiction in which the displacement occurs regardless of where he relocates. In addition, he may be paid a dislocation allowance of $200, provided, however, in cases of multiple occupancy, not families, only one dislocation allowance per dwelling will be paid.

§ 641.82 Businesses—eligibility.

(a) A person displaced from his business, as defined in subsection 101(7) (A), (B), and (C), is eligible under subsection 202(c) to receive a fixed payment in lieu of moving and related expenses. Care must be exercised in each instance, however, to assure that such payments are made only in connection with a bona fide business.

(b) A payment in lieu of actual reasonable moving expenses may be made under section 202(c) to the displaced owner of a business only if the District Engineer determines that during the two taxable years prior to displacement, or during such other period as he may determine to be more equitable, the business:

(1) Had average annual gross receipts of at least $2,000 in value; or

(2) Had average annual net earnings of at least $1,000 in value; or

(3) Contributed at least 33⅓ percent of the average gross annual income of the owner(s), including income from all sources, such as welfare.

(c) Those businesses, described in subsection 101(7)(D) are not eligible under subsection 202(c) for a payment in lieu of moving and related expenses.

(d) Where a person is displaced from his place of business, no payment shall be made under subsection 202(c) until after the District Engineer determines:

(1) That the business is not part of a commercial enterprise having at least one other establishment not being acquired, which is engaged in the same or similar business, and

(2) That the business cannot be relocated without a substantial loss of existing patronage. The determination of loss of existing patronage shall be made by the District Engineer only after consideration of all pertinent circumstances, including but not limited to the following factors:

(i) Type of business conducted by the displaced concern;

(ii) Nature of the clientele of the displaced concern; and

(iii) Relative importance of the present and proposed location to the displaced business and the availability of a suitable replacement location for the displaced person who operates the business.

[40 FR 27937, July 2, 1975]

§ 641.83 Farms—eligibility.

(a) *Entire taking.* A payment in lieu of actual reasonable moving expenses may be made to the displaced owner of a farm operation according to the criteria established for displaced owners of businesses (§ 641.82(b)). In computing gross receipts or net earnings, consideration should be given to the value of farm produce grown and used by the farm operator. Such a payment may be made to the displaced operator of a farm operation if the District Engineer determines that the farm operator has discontinued his entire farm operation at the present location or has relocated the entire farm operation.

(b) *Partial taking.* In the case of a partial taking, the operator will be considered to have been displaced from a farm operation if:

(1) The part taken met the definition of a farm operation prior to the taking; or

(2) The taking caused the operator to be displaced from the farm operation on the remaining land; or

(3) The taking caused such a substantial change in the nature of the existing farm operation as to constitute a displacement.

[40 FR 27937, July 2, 1975]

§ 641.84 Nonprofit organizations.

Where a nonprofit organization is displaced, no payment shall be made under subsection 202(c) until after the District Engineer determines:

(a) That the nonprofit organization cannot be relocated without a substantial loss of its existing patronage. The term "existing patronage" as used in connection with nonprofit organizations includes the persons, community, or clientele served or affected by the activities of the nonprofit organization.

(b) That the nonprofit organization is not part of a commercial enterprise having at least one other establishment not being acquired which is engaged in the same or similar activity.

§ 641.85 Net earnings.

The term "average annual net earnings" as used in subsection 202(c) of the Act means one-half of any net earnings of the business or farm operation, before Federal, State, and local income taxes, during the 2 taxable years immediately preceding the taxable year in which such business or farm operation moves from the real property acquired for such project, or during such other period as the District Engineer determines to be more equitable for establishing such earnings, and includes any compensation paid by the business or farm operation to the owner, his spouse, or his dependents during such period. If a business or farm operation has no net earnings or has suffered losses during the period used to compute "average annual net earnings", it may nevertheless receive the $2,500 minimum payment authorized by § 641.86

[44 FR 16910, Mar. 20, 1979]

§ 641.86 Amount of farm operation or business fixed payment.

The fixed payment to a person displaced from a farm operation or from his place of business, including nonprofit organizations, shall be in an amount equal to the average annual net earnings of the business or farm operation, except that such payment shall not be less than $2,500 nor more than $10,000.

Subpart E—Replacement Housing Payment for Homeowners

§ 641.101 Eligibility.

(a) In addition to other payments authorized, a displaced owner-occupant is eligible for a replacement housing payment, authorized by section 203(a), not to exceed $15,000, if he meets both of the following requirements:

(1) Actually owned and occupied the acquired dwelling from which displaced for not less than 180 days prior to the initiation of negotiations for the property. The term "initiation of negotiations" means the day on which the acquiring agency makes the first personal contact with the property owner or his representative and furnishes him with a written offer to purchase the real property.

(2) Purchases and occupies a replacement dwelling, which is DSS, not later than the end of the 1-year period beginning on the date on which he receives from the displacing agency the final payment of all costs of the acquired dwelling, or on the date on which he moves from the acquired dwelling, whichever is the later date, subject to exception in § 641.107(a)(1).

(b) A displaced owner-occupant of a dwelling who is determined to be ineligible under section 203 may be eligible for a replacement housing payment under section 204.

(c) Where the owner of a displaced business or farm owns and occupies a dwelling on the same premises, such person may be eligible for a replacement housing payment in addition to the payments authorized for such displaced business or farm.

§ 641.102 Comparable replacement dwelling.

For the purposes of rendering relocation assistance by making referrals for replacement housing and for computation of the replacement housing payment, a comparable replacement dwelling is one which is DSS and:

(a) Functionally equivalent to and substantially the same as the acquired dwelling but not excluding newly constructed housing.

(b) Adequate in size to meet the needs of the displaced family or individual. However, at the option of the displaced person, a replacement dwelling may exceed his needs when the replacement dwelling has the same number of rooms or the equivalent square footage as the dwelling from which he was displaced.

(c) Open to all persons regardless of race, color, religion, or national origin, consistent with the requirement of the Civil Rights Act of 1964 and title VIII of the Civil Rights Act of 1968.

(d) Located in an area not generally less desirable than the one in which the acquired dwelling is located, with respect to:

(1) Neighborhood conditions, including, but not limited to, municipal services and other environmental factors.

(2) Public utilities, and

(3) Public and commercial facilities.

(e) Reasonably accessible to the displaced person's place of employment or potential place of employment.

(f) Within the financial means of the displaced family or individual.

(g) Available on the market to the displaced person.

(h) If housing meeting the above requirements is not available on the market, the District Engineer may, upon a proper finding of the need therefor, consider available housing exceeding these basic criteria. Mobile homes may be considered as replacement dwellings, provided they meet the standards of DSS dwellings.

§ 641.103 Replacement housing payment.

The replacement housing payment of not more than $15,000 is comprised of the differential payment for replacement housing, increased interest payments, and expenses incident to the purchase of a replacement dwelling.

§ 641.104 Differential payment for replacement housing.

The amount established as the differential payment for the replacement housing sets the upper limit of such payment. The District Engineer may determine the amount, if any, which when added to the acquisition cost of the dwelling acquired is necessary to purchase a comparable replacement dwelling either by establishing a schedule or by using a comparative method. The displaced person is bound by the method selected for use by the District Engineer.

(a) *Schedule method.* The District Engineer responsible for the displacement of homeowners may make surveys to determine and certify the availability of comparable DSS housing which will meet the requirements for replacement dwellings. These surveys shall be based on a locality-wide study and must include all types of properties comparable and similar to those to be acquired by the agency. In large urban areas this survey may be confined to one area of the city or may cover several different areas if they are comparable and equally accessible to public services and places of employment. In order to assure the greatest comparability of dwellings in any such study to the dwellings being acquired, the study should be divided into classifications as to type of construction, number of rooms, price range, etc. The survey shall include the asking price of any available housing found to be acceptable as replacements. The selling prices of each of the various types of dwellings being studied should also be obtained in the survey. The amount of adjustments required for the asking prices can then be determined by comparing the asking with the actual sale price of similar houses. An analysis of the survey will then develop the average selling price of various classes and types of dwelling units on the market. The District Engineer may then establish a schedule of reasonable acquisition costs for comparable replacements for the various types of properties acquired within the project. Every effort should be made to enlist the assistance and services of local agencies and authorities in preparing these surveys and subsequent schedules. Also, the District Engineer should coordinate his staff's efforts with other agencies and, if feasible, arrange for one agency to conduct all surveys and keep the schedule current. When there are other federally assisted programs which are causing displacements in the area, close coordination is necessary for assurance that the District Engineer and other agencies are not relying upon the same housing and that the total number of units certified by all agencies does not exceed the total of units actually available for replacement housing. The District Engineer should also coordinate with other agencies on the developing of the replacement housing schedules so that the computation of differential housing payments will be uniform.

(b) *Comparative method.* The District Engineer may determine the price of a comparable replacement dwelling by selecting dwellings most representative of the dwelling unit acquired, available to the displaced person, and which meet the definition of a comparable replacement dwelling. A single dwelling shall be used only when additional comparable dwellings are not available.

(c) *Limitations.* (1) If the displaced person voluntarily purchases and occupies a DSS dwelling at a price less than the acquisition price of the acquired dwelling, no differential payment shall be made.

(2) If the displaced person voluntarily purchases and occupies a DSS replacement dwelling at a price less than the amount estimated to be necessary under paragraph (a) or (b) of this section, the replacement housing payment will be reduced to that amount required to pay the difference between the price of the acquired dwelling and the actual purchase price of the replacement dwelling.

(3) A displaced person who purchases a home which is not DSS, but which he brings up to DSS standards and occupies within the prescribed time period will be considered eligible as contemplated by section 203(a)(2) of the Act.

(4) In order for a displaced person to be eligible for benefits under section 203, his dwelling must have been acquired by the displacing agency. If a displaced person reserves the right to remove the dwelling and moves it to another location, it must be corrected, where necessary, at the owner's expense, to DSS standards and occupied by the applicant before a replacement

housing payment can be made. When this is done, the differential payment will be computed as if the dwelling had been purchased, i.e., by determining either the amount, if any which when added to the acquisition cost of the dwelling acquired is necessary to purchase a comparable replacement dwelling or the actual reasonable costs incurred in moving and rehabilitating the dwelling to DSS standards and obtaining temporary housing, and the value of the homesite, whichever is less. When comparable DSS housing is available but the displaced person chooses instead to remove the acquired dwelling for rehabilitation as his replacement home, any temporary housing costs incurred are not to be considered in the computation.

(5) Even though the dwelling being acquired may be located on a tract larger than the average residential lot in the area or on a tract whose value is based on a higher and better use than residential, section 203 of the Act requires that the replacement housing payment be based on the "acquisition cost" of the dwelling. This means that a portion of the purchase price paid for the entire property must be attributed to the dwelling and homesite. In such cases, the appraiser will be requested to insert a statement in the appraisal report reading substantially as follows:

"The total appraised value of this property is $X, of which $Y constitutes the appraised value of the dwelling and homesite." The sum of $Y will be considered the "acquisition cost" of the dwelling for the purpose of calculating section 203 benefits. However, if the eventual purchase price of the entire property should exceed the Government's appraised value, a proportionate share of any increase over the entire property's appraised value will be applied to the dwelling unless there is evidence justifying a different acquisition cost for the dwelling in relation to the value of the tract.

(6) In the situations described in paragraph (c)(5) of this section, the owner will be advised of the separate dwelling value in connection with an explanation of his overall relocation benefits. A contract for this purpose shall be made prior to the conclusion of negotiations for purchase of the property and not later than 10 days after initiation of such negotiations. If the owner rejects the Government's initial purchase offer, he will also be advised at that time that purchase of the entire property for any amount in excess of the Government's appraised value will result in a proportionate decrease in any differential housing payment to which he may be entitled.

[38 FR 14239, May 31, 1973, as amended at 40 FR 27937, July 2, 1975; 40 FR 54568, Nov. 25, 1975; 43 FR 41975, Sept. 19, 1978; 44 FR 16911, Mar. 20, 1979]

§ 641.105 Increased interest payments.

The District Engineer shall determine the amount, if any, necessary to compensate a displaced person for any increased interest costs, including points paid by the purchaser. Such amount shall be paid only if the acquired dwelling was encumbered by a bona fide mortgage. The following shall be considered:

(a) The payment shall be equal to the excess in the aggregate interest and other debt service costs of the amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the bona fide mortgage on the acquired dwelling, at the time of acquisition, over the remaining term of the mortgage on the acquired dwelling, reduced to discounted present value.

(b) The discount rate shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located.

(c) A "bona fide mortgage" is one which was a valid lien on the acquired dwelling for not less than 180 days prior to the initiation of negotiations. All bona fide mortgages on the dwelling acquired by the Corps of Engineers will be used to compute the increased interest cost portion of the replacement housing payment.

(d) The computation of the payment for increased interest costs will be based on the actual term of the new mortgage or the remaining term of the old mortgage, whichever is the lesser, and the computation will be based on the actual amount of the new mortgage or the amount of the old mortgage, whichever is the lesser.

(1) Seller's points are not to be included in the interest computation.

(2) The actual interest rate of the new mortgage will be used in the computation.

(3) Purchaser's points and/or loan origination fees will be added to the computed interest payment.

(e) However, the interest payment shall be based on the present value of the reasonable cost of the interest differential, including points paid by the purchaser, on the amount of the unpaid debt on the acquired dwelling for its remaining term.

(f) See format for computation of interest payment below:

REQUIRED INFORMATION

1. Outstanding balance of mortgage on acquired dwelling	$———
2. Outstanding balance of mortgage on replacement dwelling	$———
3. Lesser of Line 1 or Line 2	$———
4. Number of months remaining until last payment is due for mortgage on acquired dwelling	———
5. Number of months remaining until last payment is due for mortgage on replacement dwelling	———
6. Lesser of Line 4 or Line 5	———
7. Annual interest rate of mortgage on acquired dwelling (percent)	———
8. Annual interest rate of mortage on replacement dwelling (or, if it is lower, the prevailing annual interest rate currently charged by mortgage lending institutions in the general area in which the replacement dwelling is located) (percent)	———
9. Prevailing annual interest rate paid on standard passbook savings accounts by commercial banks (percent)	———
10. If applicable, any debt service costs on the loan on the replacement dwelling, such as points paid by the purchaser which are not reimbursable as an incidental expense	$———
DEVELOPMENT OF MONTHLY PAYMENT FIGURES	
A. Monthly payment required to amortize a loan of $——— (Line 3) in ——— (Line 6) months at an annual interest rate of ——— (Line 7) percent	$———
B. Monthly payment required to amortize a loan of $——— (Line 3) in ——— (Line 6) months at en annual interest rate of ——— (Line 8) percent	———
C. Monthly payment required to amortize a loan of $——— (Line 3) in ——— (Line 6) months at an annual interest rate of ——— (Line 9) percent	———
CALCULATION OF INTEREST PAYMENT	
Step 1. Subtract A from B:	
Monthly payment based on rate for replacement dwelling (B)	$———
Monthly payment based on rate for acquired dwelling (A)	$———
Result (difference)	$———
Step 2. Divide result (difference) of Step 1 by C (carry to 6 decimal places):	
Result (difference) from Step 1	$———
Monthly payment based on savings rate (C)	$———
Result (quotient)	$———
Step 3. Multiply outstanding balance of mortgage on acquired dwelling by result (quotient) of Step 2:	
Outstanding Balance (from Line 3)	$———
Result (quotient) of Step 2	$———
Result (product)	$———
Step 4. Add to result (product) of Step 3 any debt service costs on the loan on the replacement dwelling:	
Result (product) of Step 3, first mortgage	$———
Result (product) of Step 3, second mortgage [1]	$———
Sum of difference, as applicable [1]	$———
Add debt service costs on loan on replacement dwelling (Line 10)	$———
Amount of interest payment	$———

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[1] If there is more than one outstanding mortgage on an acquired dwelling, the discounted value of each mortgage must be determined. To do this, a separate computation is made to such mortgage through Step 3. A consolidated Step 4 is then completed.

[40 FR 27937, July 2, 1975]

§ 641.106 Expenses incident to purchase of replacement dwelling.

A displaced person may be paid, as part of the replacement housing payment, reasonable expenses incident to the purchase of the replacement dwelling. Items, such as the following, are eligible for reimbursement:

(a) Legal, closing, and related costs including title searches and guarantees, preparing conveyance contracts, notary fees, surveys, preparing drawings of plots, and charges incident to recordation;

(b) Lenders, FHA, or VA appraisal fees;

(c) FHA or VA application fee;

(d) Certification of structural soundness when required by lender, FHA, or VA;

(e) Credit report;

(f) Escrow agent's fee;

(g) State revenue stamps and sale or transfer taxes.

§ 641.107 Contract for rehabilitation or construction of replacement dwellings.

(a) A displaced person may, in lieu of purchasing a comparable DSS replacement dwelling, contract for the rehabilitation of an existing dwelling purchased by him, contract for the purchase of a dwelling to be constructed on a site provided by a builder or developer, or contract for the construction of a dwelling on a site which he owns or acquires for that purpose.

(1) If the date of completion of rehabilitation or construction of a replacement dwelling may be delayed, for reasons not within the reasonable control of the displaced person, beyond the time required for eligibility for payment, the District Engineer may determine the date of occupancy as the date the displaced person enters into a contract for such rehabilitation and construction, or for the purchase, *Provided, however,* That no replacement housing payment will be made until the displaced person actually occupies the dwelling.

(2) Ordinarily, the displacement should not occur before replacement housing is available. However, the displaced owner may elect to contract for purchase of a dwelling to be constructed by a developer, or contract for rehabilitation or construction of a dwelling and relocate into interim housing. Where comparable DSS housing is available and the displaced person makes such election, the cost of living in such interim housing is not reimbursable.

(b) Whenever a displaced person is eligible for a replacement housing payment, the District Engineer may, at the request of the displaced person, provide a written statement to any interested person, financial institution, or lending agency as to the displaced person's eligibility for a payment and the requirements that must be satisfied before such pament may be made. If the proposed replacement dwelling has been selected, or if plans and specifications are available for the construction or rehabilitation of the proposed dwelling, the District Engineer may, after inspecting the dwelling or plans, and finding that they meet the required standards, include such finding and the amount of payment to be available in such statement.

§ 641.108 Verification and records.

A written record of the determination that replacement housing is comparable and DSS, with supporting details, will be made and placed with the records of the case. Also, a written verification of the purchase and occupancy of such dwelling will be made and filed with the records of the case.

§ 641.109 Advance replacement housing payment in condemnation cases.

No property owner should be deprived of the earliest possible payment of the replacement housing amounts to which he is rightfully due. The following procedure shall be used in cases involving condemnation:

(a) An advance replacement housing payment can be computed and paid to a property owner if the determination of the acquisition price will be delayed pending the outcome of condemnation proceedings. The District Engineer may make a provisional replacement housing payment to the displaced homeowner based on the Government's deposit with the court for the dwelling, provided the homeowner enters into an agreement with the Government that:

(1) Upon final determination of the condemnation proceedings, the replacement housing payment will be recomputed as being the difference between the acquisition price determined by the court and the lesser of actual price paid for or the average amount determined by the District Engineer as necessary to acquire a comparable, decent, safe, and sanitary dwelling; and

(2) If the amount awarded in the condemnation proceedings as the fair market value of the dwelling acquired plus the amount of the provisional replacement housing payment exceeds the lesser of the price paid for, or the District Engineer's determined cost of, a comparable dwelling, he will refund the excess to the Government. However, in no event shall he be required to refund more than the amount of the provisional replacement housing payment.

(b) If the property owner does not agree to such adjustment, the replacement housing payment shall be deferred until the case is finally adjudicated and computed on the basis of the final determination, using the award as the acquisition price.

[40 FR 27938, July 2, 1975, as amended at 40 FR 54569, Nov. 25, 1975; 44 FR 16911, Mar. 20, 1979]

§ 641.110 Requirement to receive payment.

Before an otherwise eligible owner-occupant may receive a replacement housing payment the District Engineer must have verified that he purchased and occupied DSS housing within the required time. The displaced person is not required to purchase and occupy comparable housing, but he must purchase and occupy DSS housing. Upon such verification, the District Engineer will certify that the owner-occupant did purchase and occupy such housing within the prescribed time.

Subpart F—Replacement Housing Payments for Tenants and Certain Others

§ 641.131 Eligibility.

(a) A displaced tenant or owner-occupant of an acquired dwelling is eligible for a replacement housing payment not to exceed $4,000, as authorized by section 204, if he meets both of the following requirements:

(1) Actually occupied the dwelling for not less than 90 days prior to the initiation of negotiations for acquisition of the property. The term "initiation of negotiations" means the day on which the District Engineer makes the first personal contact with the property owner or his representative and furnishes him with a written offer to purchase the real property. Tenants and other persons occupying property shall be advised, in writing, when negotiations for the property are initiated with the owner thereof.

(2) Is not eligible to receive a payment under section 203.

(b) An owner-occupant of a dwelling for not less than 180 days prior to the initiation of negotiations is eligible for a replacement housing payment as a tenant, as authorized by section 204, when he rents a DSS replacement dwelling, instead of purchasing and occupying a replacement dwelling which is DSS not later than the end of the 1-year period beginning on the date on which he receives from the District Engineer final payment for all costs for the acquired dwelling, or on the date on which he moves from the acquired dwelling, whichever is the later date.

§ 641.132 Computation and method of payment.

The benefits consist of a rental replacement housing payment, or if replacement housing is purchased within 1 year from displacement, a down payment, including expenses incident to closing. The total replacement housing payment may not exceed $4,000.

(a) *Rental supplement housing payment.* The District Engineer may determine the amount necessary to rent a comparable replacement dwelling either by establishing a schedule or by using a comparative method; provided, however, that in computing the rental replacement housing payment under either method, the actual or economic rent of the acquired dwelling shall be subtracted from the lesser of the amount of rent actually paid for the replacement dwelling; or the amount determined necessary to rent a comparable replacement dwelling.

(1) *Schedule method.* The District Engineer may establish a rental schedule for renting comparable replacement dwellings as described in § 641.102 and which are available in the private market for the various types of dwellings to be acquired. The payment shall be computed by determining the amount necessary to rent a comparable replacement dwelling for 4 years (the average monthly cost from the schedule) and subtracting from such amount 48 times the average month's rent paid by the displaced tenant in the last 3 months prior to initiation of negotiations, if such rent was reasonable. For a displaced owner-occupant, the present rental rate for the acquired dwelling should be economic rent as determined by market data. There may be other circumstances which may indicate the use of economic rather than actual rent paid by the displaced person. For the purposes of these guidelines, economic rent is defined as the amount of rent the displaced person would have had to pay for a comparable dwelling unit in an area similar to the neighborhood in which the dwelling unit to be ac-

quired is located. The schedule should be based on current analysis of the market to determine an amount for each type of dwelling required. When more than one Federal agency is causing the displacement in a community or an area, the District Engineer shall cooperate with the other agencies concerned in choosing the method for computing the replacement housing payment and shall use uniform schedules of average rental housing in the community or area.

(2) *Comparative method.* The District Engineer may determine the average month's rent by selecting one or more dwellings most representative of the dwelling unit acquired, which is available to the displaced person and meets the definition of a comparable replacement dwelling as described in § 641.102. The payment should be computed by determining the amount necessary to rent a comparable replacement dwelling for 4 years and subtracting from such amount 48 times the average month's rent paid by the displaced tenant in the last 3 months prior to initiation of negotiations, if such rent was reasonable. There may be circumstances which may dictate the use of economic rather than actual rent paid by the displaced person.

(3) *Exceptions.* The District Engineer may establish the average month's rent paid by the displaced person by using a period of more than 3 months as a basis, if he deems it advisable. Also, in any case involving a low income displacee where the average rent paid for the acquired dwelling, plus heat, electricity, and water, if paid in addition to rent exceeded 25 percent of the gross income of such displaced person, the rental supplement will be computed based on the difference between the rent to be paid for the replacement dwelling, plus the above utilities, and 25 percent of the displaced person's gross income.

(4) *Alternate to paragraphs (a) (1) and (2) of this section.* When neither method is feasible, the District Engineer shall make recommendations to the Chief of Engineers for an alternate method of computing the payment.

(5) *Method of payment.* The amount of the rental payments under section 204 (1) shall be determined and paid in a lump sum, except that it shall be paid in installments if the displaced person so requests.

(b) *Purchases—Replacement housing payment.* If the displaced person elects to purchase instead of renting, the payment shall be computed by determining the amount necessary to enable him to make a down payment and to cover incidental expenses on the purchase of replacement housing, as follows:

(1) The amount of the down payment shall be the lesser of:

(i) The amount that would be required as a down payment for financing a conventional loan on a comparable dwelling; or

(ii) The amount required as a down payment for financing a conventional loan on the replacement dwelling actually purchased.

The amount determined shall be added to the amount required to be paid by the purchaser as points and/or origination or loan service fees, if such fees are normal to real estate transactions in the area, on the comparable dwelling or the replacement dwelling, whichever is the lesser.

(2) Incidental expenses of closing the transaction are those as described in § 641.106.

(3) The maximum payment shall not exceed $4,000 except that if more than $2,000 is required, the tenant must match any amount in excess of $2,000 by an equal amount in making the down payment.

(4) The full amount of the replacement housing payment must be applied to the purchase price and incidental costs shown on the closing statement.

[38 FR 14239, May 31, 1973, as amended at 40 FR 27938, July 2, 1975]

Subpart G—Mobile Homes

§ 641.151 Mobile home qualifies as a dwelling.

A mobile home is a "dwelling" within the meaning of sections 203 and 204 of the Act, regardless of

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whether, in law, the mobile home is realty or personalty if it is, in fact, the place of permanent or customary and usual abode of a displaced person as defined in section 101(6) of the Act.

§ 641.152 Acquisition of mobile home.

A mobile home will be acquired where it is considered to be real property under State law, cannot be moved without substantial damage or unreasonable cost, or is not a DSS dwelling.

§ 641.153 Ownership requirements under section 203.

The owner of a mobile home, who is otherwise eligible, qualifies under the "ownership" requirement with respect to section 203 regardless of whether or not he owns any interest in the land on which it is situated.

§ 641.154 Removal of mobile home.

Acquisition of title to the dwelling by the acquiring agency is a prerequisite to the payment of benefits under section 203. If the mobile home is not acquired, it must be removed by the owner, and the moving cost is reimbursable under section 202.

§ 641.155 Mobile home acquired—owner also owns underlying land.

Where the owner of a mobile home, which is acquired, also owns the underlying land:

(a) The owner is entitled to benefits under section 202, if otherwise eligible.

(b) The owner is entitled to benefits under section 203, if otherwise eligible. Benefits under this section, however, should be computed on the basis of the cost of a comparable DSS mobile home on a replacement site.

(c) The owner is entitled to benefits under section 204 if: (1) He is not eligible for a payment under section 203, and (2) he actually and lawfully occupied the mobile home for not less than 90 days prior to the initiation of negotiations.

§ 641.156 Mobile home acquired—owner does not own underlying land.

Where the owner of a mobile home does not own the underlying land and the Government acquires both the land and the mobile home:

(a) The owner is entitled to benefits under section 202, if he is otherwise eligible.

(b) The owner is entitled to benefits under section 203, if otherwise eligible, but his differential benefits are limited to the increased amount necessary to purchase a comparable DSS mobile home, without any land.

(c) The owner is entitled to benefits under section 204 if: (1) He is not eligible for a payment under section 203, and (2) he actually and lawfully occupied the mobile home for not less than 90 days prior to the initiation of negotiations.

§ 641.157 Mobile home acquired—former owner reserves right of removal.

Where the United States acquires a mobile home, because it is considered to be real property, the former owner should be accorded the same opportunity to reserve the right to remove it by a certain date as in the case of conventional homes.

(a) A mobile home will generally have a relatively greater value for removal than would a conventional home. Accordingly, the District Engineer should obtain a return for the mobile home which approximates its market value.

(b) The former owner is not eligible under section 202 for payment of the costs of moving the mobile home in this situation, although reasonable costs of moving the contents separately may be allowed, at the discretion of the District Engineer.

§ 641.158 Mobile home not acquired.

Where the Government acquires the land only and the owner removes the mobile home:

(a) The owner is entitled to benefits under section 202, if otherwise eligible. If he uses such mobile home for his replacement home, he may be paid not only for the cost of moving the mobile home but for detaching and reattaching such mobile home in its new location.

(b) Since acquisition of title to the dwelling is a prerequisite to eligibility for benefits under section 203 and the mobile home was not acquired, the owner is not entitled to benefits under section 203; however, in a proper case, he may be entitled to benefits under section 204.

§ 641.159 Mobile home as replacement dwelling.

A mobile home which meets the DSS standards of the Act is a suitable replacement dwelling. When a mobile home is purchased as a replacement home and located on a site owned or purchased by the applicant, its value should be included in calculating benefits under section 203 or 204.

Subpart H—Relocation Assistance Advisory Services

§ 641.171 Relocation assistance advisory program.

Section 205 requires establishment of a relocation assistance advisory program for persons displaced as a result of Federal or federally assisted programs or projects. District Engineers will provide such a program where Federal projects are involved; State agencies are required to provide the advisory program when federally assisted projects are involved. Each relocation assistance advisory program shall include such measures, facilities, or services as may be necessary or appropriate in order to:

(a) Determine the need, if any, of displaced persons for relocation assistance;

(b) Provide current and continuing information on the availability, prices and rentals of comparable, decents, safe, and sanitary sales and rental housing and of comparable commercial properties and farms, and locations for displaced businesses;

(c) Assure that within a reasonable period of time prior to displacement there will be available comparable, decent, safe, and sanitary replacement dwellings, equal in number to the number of and available to such displaced persons who require such dwellings and reasonably accessible to their places of employment;

(d) Assist a person who is displaced from his business or farm operation in obtaining and becoming established in a suitable replacement location;

(e) Supply information concerning Federal and State housing programs, disaster loan programs, and other Federal or State programs offering assistance to displaced persons;

(f) Provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to such relocation;

(g) Prior to initiation of acquisition, provide persons, from whom it is planned to acquire land, a brochure or pamphlet outlining the benefits to which they may be entitled under the Act and information concerning other assistance which might be furnished them. Such brochures should contain information that any payment received under title II of the Act will not be considered as income for the purposes of the Internal Revenue Code of 1954, or for the purpose of determining eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal law.

(h) Advise owners and others affected that they should notify the District Engineer before they move.

§ 641.172 Coordination of planned relocation activities.

(a) *Federal coordination.* When two or more Federal agencies contemplate displacement activities in a given community or area, the District Engineer will establish appropriate channels of communication for the purposes of planning relocation activities and coordinating available housing resources. The District Engineer in coordination with the other agencies concerned shall consult with the appropriate Housing and Urban Development Regional/Area Office within the jurisdictional area concerning the availability of housing. Attached as Appendix B is a directory of such Regional/Area Offices which are required to be maintained on a current basis by the Department of Housing and Urban Development. Subsequent updated directories are available from that Department upon request. The District Engineer shall designate a representative to meet periodically with the representatives of other Federal agencies to review the impact of their respective programs on the community or area for the purpose of providing the Housing and Urban Development Regional/Area Office with information regarding the projects which will cause displacement.

(b) *Local coordination.* To further insure maximum coordination of relocation activities in a given community or area, the District Engineer shall consult appropriate local officials before proceeding with any proposed project in the community, consistent with the requirements of the procedures promulgated by the Office of Management and Budget Circular A-95 (revised). That circular provides a central point of identifying local officials.

§ 641.173 Contracting for relocation services.

(a) *Contracting with Central Relocation Agency.* The District Engineer shall consider contracting with the central relocation agency in a community or area for the purpose of carrying out relocation activities. Regulations and procedures shall be prescribed by the District Engineer requiring specific performance standards for these services. Information and assistance concerning these services is available upon request from the appropriate Housing and Urban Development Regional/Area Office.

(b) *Contracting with others.* When a centralized relocation agency is not available in a community or if in the judgment of the District Engineer the centralized agency does not have the capacity to provide the necessary services within the time required, the District Engineer may contract with another public agency or a private contractor who can provide the necessary relocation services.

§ 641.174 Local relocation office.

When the District Engineer determines that the needs of displaced persons warrant, he will establish a relocation office which is reasonably convenient to the majority of the potential displaced persons. Liaison will be established with all real estate firms and realtors in the area in order to provide them with maximum knowledge of the number of displaced persons and their needs for replacement housing and also to establish a workable continuing program for such firms to provide current lists of available housing for sale, which may, in many cases, be listed exclusively with a specific firm. Extreme care must always be taken to reflect exclusive listings and identify the particular firm holding the listing. Although this is also a Government service for the benefit of displaced persons, considerable care and judgment must be exercised not to provide such services in a manner which would usurp the prerogative of private realtors or give the appearance of favoring various firms or individuals. The following information as a minimum will be maintained on a project basis:

(a) Lists of available comparable and decent, safe, and sanitary dwellings.

(b) Current data for such costs as credit data, closing costs, typical downpayments, interest rates, and terms.

(c) Maps showing the location of schools, parks, playgrounds, shopping, public transportation routes, and other information that may be applicable.

(d) Copies of brochures explaining the relocation program.

Subpart I—Uniform Real Property Acquisition

§ 641.191 Policy.

(a) Consistent with the policy expressed in § 641.6, every effort will be made, to the greatest extent practicable, to:

(1) Acquire real property by agreements with owners based on negotiations;

(2) Assure consistent treatment for owners in real property acquisition programs; and

(3) Accomplish negotiations expeditiously.

(b) The summary of the appraisal provided for in § 641.192 will be furnished to the landowner and a prompt offer will be made to acquire the real property for an amount not less than the estimated fair market value, as developed by the approved appraisal. This does not preclude further negotiations with respect to the purchase price.

(c) Contracts or options by any agency to purchase land will not include any other payments under the Act or any reference to such payments.

(d) If the acquisition of only part of a property would leave its owner with an uneconomic remnant, the Government shall offer to acquire the entire property.

(e) Application of title III of the Act in leasehold acquisitions is dependent upon the circumstances under which the leasing action takes place. When the Government initiates action to lease a specific property, the pertinent provisions of title III of the Act apply. In cases where the owner voluntarily offers his property to the Government, the provisions of title III do not apply.

§ 641.192 Appraisal of property to be acquired.

(a) Prior to initiation of negotiations, an appraisal of the real property interest to be acquired will be made.

(b) The owner or his designated representative will be given an opportunity to accompany the appraiser during his inspection of the property.

(c) For the purpose of promoting uniformity under section 301(3) of the Act, the standards for appraisals used in this program, the criteria for determining the qualifications of appraisers, and the system of review by qualified appraisers, shall be consistent with the Uniform Appraisal Standards for Federal Land Acquisition published in 1972 by the Interagency Land Acquisition Conference.

(d) Any enhancement or dimunition in the value of the property prior to the date of the valuation which is caused by the public improvement for which the property is acquired or by the likelihood that the property would be acquired for such improvement, other than due to physical deterioration within the reasonable control of the owner, will be disregarded in appraising the property.

(e) When the appraisal has been completed and approved, the owner of the real property will be provided with a written statement of, and summary of the basis for, the amount estimated as the fair market value of the property to be acquired. The written statement will be in the form of a letter addressed to the landowner which may be delivered personally or by first class mail. The time and manner of delivery should be made a matter of record. (Appendix C is a suggested format for this letter statement.) Such summary will include, as a minimum, the following items:

(1) Identification of the real property and the estate or interest therein to be acquired including the buildings, structures, and other improvements on the land as well as the fixtures considered to be a part of the real property.

(2) The amount of the estimated just compensation for the property to be acquired as determined by the acquiring agency and a statement of the basis therefor. In the case of a partial taking, damages, if any, shall be separately stated.

(f) A revised or new summary of the basis for appraisal will be furnished to the landowner either if an update of the previously approved appraisal results in a different value determination, or if a second appraisal is obtained and the Division or District Engineer determines that the second appraisal shall be the basis for purchase negotiations and deposit in condemnation proceedings.

§ 641.193 Improvements owned by tenants.

(a) Whenever any interest is acquired for a Federal or federally assisted program in any State, the acquiring agency will acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property, including advertising signs, which the agency determines will be adversely affected by the use to which such real property will be put.

(b) The following apply in determining the just compensation for any such building, structures, or other improvements:

(1) They will be deemed to be part of the real property to be acquired, notwithstanding the right or obligation of the tenant as against the owner of any other interest in the real property to

remove them at the expiration of his term.

(2) The fair market value which such structures, buildings, or other improvements contribute to the fair market value of the real property to be acquired, or the fair market value of such buildings, structures, or other improvements for removal from the real property, whichever is greater, will be paid the tenant.

(c) Payments under paragraphs (b) (1) and (2) of this section will not be made:

(1) Which result in duplication of any payments otherwise authorized by law.

(2) Unless the owner of the land involved disclaims all interest in such buildings, structures, or other improvements.

(3) Unless the tenant agrees that in consideration of any such payment he will assign, transfer, and release to the acquiring agency all his right, title, and interest in and to such buildings, structures, and improvements.

(d) The tenant may reject payment under this subsection and obtain payment for the buildings, structures, or other improvements in accordance with any other applicable law.

§ 641.194 Requirement to move.

(a) The construction or development of a project will be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property will be required to move from a dwelling (assuming a replacement dwelling as required by Subpart E hereof will be available), or to move his business or farm operation, without at least 90 days' written notice prior to the date on which such move is required. This requirement applies only in those instances where actual displacement of persons, businesses, or farm operations occur. A notice of less than 90 days should be given only in an emergency or other extraordinary situations. When it is proposed to give an advance notice of less than 90 days, the prior approval of HQDA (DAEN-REA) Washington, D.C. 20314, will be obtained.

(b) No owner will be required to surrender possession of real property before he has been paid the agreed purchase price, or the deposit has been made with the court, in accordance with section I of the Act of February 26, 1931 (46 Stat. 1421, 40 U.S.C. 258a), for the benefit of the owner, in an amount not less than the approved appraised fair market value of such property, or the amount of the award of compensation in the condemnation proceeding for such property.

§ 641.195 Condemnation.

(a) The time of condemnation will neither be advanced, nor negotiations or condemnation and the deposit of funds in court be deferred, nor any other action coercive in nature taken, in order to compel an agreement on price.

(b) If real property is to be acquired by condemnation, proceedings will be instituted promptly. No action will intentionally be taken which will make it necessary for an owner to institute legal proceedings to prove the taking of his real property.

§ 641.196 Expenses incidental to transfer of title to the United States.

As soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award in a condemnation to acquire real property, the owner will be reimbursed to the extent the District Engineer determines fair and reasonable for expenses he necessarily incurred for:

(a) Recording fees, transfer taxes, and similar expenses incident to conveying the real property to the United States;

(b) Costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and

(c) The pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the United States, or the effective date of possession of such real property by the United States, whichever is earlier. Reimbursement for such taxes may be made from Imprest Funds in amounts limited to $100 per payee and may be made at closing. Payments exceeding $100 should be processed in the usual manner. At the discretion of the District Engineer, a separate Imprest Fund may be established for this purpose following normal finance and accounting procedures, subject to the same limitation on individual payments.

[38 FR 14239, May 31, 1973, as amended at 44 FR 16911, Mar. 20, 1979]

§ 641.197 Lease to former owner or occupant.

If an owner or tenant is permitted to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the Government on short notice, the amount of rent required will not exceed the fair market rental value of the property to a short-term occupier.

§ 641.198 Litigation expenses.

Section 304 of the Act provides that:

(a) The Federal court having jurisdiction of a proceeding instituted by a Federal agency to acquire real property by condemnation will award the owner of any right, or title to, or interest in, such real property such sum as will in the opinion of the court reimburse such owner for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceedings, if:

(1) The final judgment is that the Federal agency cannot acquire the real property by condemnation; or

(2) The proceeding is abandoned by the United States.

(b) Any award made pursuant to paragraph (a) of this section will be paid by the head of the Federal agency for whose benefit the condemnation proceeding was instituted.

(c) The court rendering a judgment for the plaintiff in a proceeding brought under section 1346(a)(2) or 1491 of title 28, U.S.C., awarding compensation for the taking of property by a Federal agency, or the Attorney General affecting a settlement of any such proceeding, will determine and award or allow to such plaintiff, as part of such judgment or settlement, such sum as will, in the opinion of the court or the Attorney General, reimburse such plaintiff for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of such proceeding.

Subpart J—Federally Assisted Programs

RELOCATION ASSISTANCE ASSURANCES BY STATE AGENCIES

§ 641.211 Assurances.

(a) *General.* In the case of federally assisted programs carried out by State agencies, such agencies are required by the Act to reimburse owners for necessary expenses as specified in sections 303 and 304 of the Act and must provide the assurances required by sections 210 and 305 of the Act with respect to any program or project that will result in the displacement of any person or the acquisition of any real property. There is no provision for reimbursement by the Federal Government to States for such costs incurred after July 1, 1972.

(b) *Information on benefits to affected persons.* The assurances required of State agencies by sections 210 and 305 of the Act should include a statement that the affected persons will be adequately informed of the benefits, policies, and procedures described in the assurances.

(c) *Inability of States to provide assurances for programs or projects causing displacement.* If a State agency is unable to provide the assurances required by sections 210 and 305 of the Act, the District Engineer shall not approve any grant to, or contract or agreement with, such State agency under which Federal financial assistance will be available to pay all or part of the cost of such program or project, until such time as assurances applicable to all persons to be displaced and owners of real property to be acquired are provided.

(d) *Monitoring assurances.* The District Engineer shall take continuing action to conduct inspections to insure that State agencies are acting in accordance with the assurances they have provided.

§ 641.212 Grants, contracts, or agreements executed prior to July 1, 1972.

Under section 211 of the Act, any grant to, or contract with, a State agency executed before July 1, 1972, under which Federal financial assistance is available to pay all or part of the cost of any program or project which will result in the displacement of any person on or after July 1, 1972, or the date on which the Act becomes effective in such State, whichever is earlier, shall be amended to include the cost of providing payments and services under sections 210 and 305 of the Act.

ADMINISTRATION

§ 641.231 Administration—Relocation assistance programs.

(a) *Approval.* The District Engineer is responsible for assuring that State agencies comply fully with these regulations in administering the relocation program whether relocation is by a State agency itself or by a contractor acting for the State agency so as to provide uniform and effective relocation benefits for all displaced persons.

(b) *Contract for services by State agencies.* A State agency electing to contract for services pursuant to section 212 of the Act should enter into a written contract consistent with these regulations. Contracts shall include, as a minimum, the following provisions:

(1) That payments and assistance will be provided in accordance with these regulations.

(2) That records will be retained by the contractor for a period of at least 3 years and shall be available for inspection by representatives of the Army.

(3) That there be full compliance with title VI of the Civil Rights Act of 1964 (Pub. L. 88-353).

§ 641.232 Project cost.

(a) *State relocation payments part of project cost.* The cost to a State agency of providing payments and assistance pursuant to the Act shall be included as part of the cost of a project for which the Federal Government furnishes financial assistance and the State agency will be eligible for Federal financial assistance with respect to such payments and assistance in the same manner and to the same extent as other program or project costs.

(b) *Relocation payments excluded from project cost where displaced person has received comparable benefits under eminent domain.* No payment or assistance under the Act will be required of a State agency, or included as a program or project cost if the displaced person receives a payment required by the State law of eminent domain which is determined by the Chief of Engineers to have substantially the same purpose and effect as the payment and assistance required by the Act as set forth in this regulation. When the District Engineer is of the opinion that such situation exists, he will submit his recommendation through the Division Engineer to HQDA (DAEN-REH-O) Washington, D.C. 20314, for determination.

Subpart K—Application Processing and Submission to Disbursing Officer for Payment of Benefits

§ 641.251 Preparation of Preliminary Relocation Data Form.

(a) As soon as practicable after acquisition action is commenced, the Preliminary Relocation Data Form, ENG Form 4436 (Appendix D) will be prepared for each owner, tenant, or other person living on the premises who is not a member of the owner's or tenant's family, for the purpose of obtaining information relative to each prospective applicant for later use in processing his application at the time of his relocation and for the purpose of being informed on the scope of relocation assistance involved. This form should be prepared prior to vacation of the property, if practicable.

(b) If the prospective applicant has not previously been furnished with information concerning benefits under title II of the Act, such information should be furnished at the time the Preliminary Relocation Data Form is prepared.

§ 641.252 Application.

(a) The application to be used in processing claims for relocation assistance is comprised of various forms developed by the General Services Administration and approved by the Office of Management and Budget, standard forms 262 through 267 (figure 6-4). Although these forms are self-explanatory, the District Engineer will render such assistance to the applicant as may be necessary for their completion. The application, when submitted to the District Engineer, must be accompanied by supporting invoices, receipts or other items to substantiate payment for each item in the amount claimed.

(b) Except as indicated herein, applications for payment of benefits must be filed with the appropriate District Engineer not later than 18 months from the date full payment for the real property acquired is made by the Government, or from the date the displaced person moves from the acquired property, whichever is later. When the property is acquired by condemnation, the date on which the Government has satisfied all awards will be considered as the date of full payment. The District Engineer shall insure that applicants are notified in writing of the filing expiration date three months prior to such date, accompanied by an offer to assist in preparation of the application. If circumstances warrant, the Chief of Engineers may authorize acceptance of a late-filed application; therefore, the District Engineer shall secure approval from HQDA (DAEN-REH-O), Washington, D.C. 20314, before denying any application for late filing.

[43 FR 41975, Sept. 19, 1978, as amended at 44 FR 16911, Mar. 20, 1979]

§ 641.253 Investigation report.

Upon receipt of an application, the District Engineer will make such computations as may be necessary, ENG Form 4437 (Appendix E) with respect to relocation benefits due based on the application form received and will complete the Report of Investigation, ENG Form 4438 (Appendix F).

§ 641.254 Determination of relocation benefits due applicant.

After initial review of the various forms and supporting documentation comprising the application and determination of the amounts allowable, such amounts will be recorded on the Determination of Relocation Benefits Due Applicant, ENG Form 4439 (Appendix G). Approval or disapproval, in whole or in part, for each element claimed will be indicated. The completed application will be forwarded with all necessary supporting documents to the appropriate disbursing officer for payment. The applicant will be advised promptly by the District Engineer of the action taken on his application. Where there is a difference between the amount claimed and the amount allowed, the applicant will be informed as to his rights on appeal (Subpart M).

§ 641.255 Stocking of forms.

The various ENG forms and proposed standard forms will be stocked at the OCE Publications Depot.

§ 641.256 Recommended changes to forms.

The District Engineer will submit any recommended changes in forms to HQDA (DAEN-REH) Washington, D.C. 20314.

§ 641.257 Retention of records.

All forms and supporting documents relating to each application will be retained by the District Engineer for not less than 3 years.

Subpart L—Records and Reports

§ 641.271 General.

The reports required by this chapter are designed to provide detailed information on applicants at Federal projects requesting reimbursement under the provisions of title II, Pub. L. 91-646, and summary information on payments made by local interests at federally assisted projects under the provisions of titles II and III of Pub. L. 91-646.

§ 641.272 Reports control symbol.

RCS DAEN-RE-18 and RCS DAEN-RE-22 are assigned to reports required by § 641.273.

[43 FR 22336, May 25, 1978]

§ 641.273 Reporting requirements.

(a) *RCS DAEN-RE-18.* Detailed information concerning persons displaced from their homes, businesses or farms by Federal projects of the Department of the Army (Military and Civil Works) and the Department of the Air Force and those Federal agencies for which the Corps of Engineers acts as agent will be reported quarterly as of September 30, December 31, March 31, and June 30. The method of reporting is explained in Appendix H.

(b) RCS DAEN-RE-22. Summary statistical data pertaining to land and relocation costs during the fiscal year by local interests in connnection with federally assisted projects will be reported. ENG form 4660-R will be used for this purpose.

[38 FR 14239, May 31, 1973, as amended at 43 FR 22356, May 25, 1978]

§ 641.274 Reporting instructions.

(a) *Quarterly reports.* Quarterly reports required by RCS DAEN-RE-18 will be furnished to HQDA (DAEN-REP-R), Washington, D.C. 20314, NLT the Seventh working day after the end of the reporting period.

(b) *Annual reports.* Annual reports required by RCS DAEN-RE-22 will be dispatched in sufficient time to reach HQDA (DAEN-REH-O) Washington, D.C. 20314 by November 1 of each year.

(c) *Data transmission.* Electronic transmission of punched cards by DCS Autodin is recommended and procedures outlined in Chapter 4 of ER 18-1-18 should be followed. "REP" should be punched in card columns 6-8 of the Data Header Card and "DAEN-RE-18" should be punched in card columns 25-34 of the Text Header Card.

[38 FR 14239, May 31, 1973, as amended at 43 FR 22356, May 25, 1978]

Subpart M—Appeals

§ 641.291 Administrative review.

Procedures are set forth in this chapter, under section 213(b) of the Act for the review of the application for benefits of any person who considers himself aggrieved by a determination as to his eligibility for payments, or the amount of such payments. Such administrative review is hereinafter designated as an "appeal." In the case of a State program or project receiving Federal financial assistance, a review by the head of the State agency is required in accordance with procedures established by said State agency which will insure fair, adequate, and prompt review of all appeals filed.

§ 641.292 Notice to applicant.

(a) Prompt written notice will be given to an applicant of any determination made in connection with his application. This written notice shall include a full explanation concerning any amount claimed which has been disallowed as well as an explanation of his right to appeal. Payment of any amounts determined to be due the applicant will be made promptly and the applicant will be informed that acceptance of any such amounts will not prejudice his right to appeal any determination made in connection with his application.

(b) The applicant should be advised that if he believes the decision made in connection with his application for benefits under the Act is in error, he may file an appeal with the District Engineer or with the Chief of the District Real Estate Division, in writing, within 180 days from the date of the notice of such decision, identifying any claimed errors and stating the basis for his appeal. In addition, he should be advised that he may appear or be represented by counsel at a mutually agreeable time and may submit additional information at any time prior to final action on his appeal. He should also be advised that his appeal will be considered by the District Engineer, reviewed by the Division Engineer and, if action favorable to him cannot be taken, submitted to the Office, Chief of Engineers, for final decision.

§ 641.293 Filing of appeal.

(a) An applicant may file an appeal from a decision denying his application, or from a decision which the applicant believes to be in error in any respect. Any written objection by an applicant to a decision made on his case or to a determination of benefits due him will be considered to be an appeal and will be promptly acknowledged as such. Notwithstanding any additional correspondence or communication with the applicant, the appeal will be processed in accordance with these appeal procedures unless formally withdrawn by the applicant.

(b) Although appeals are to be filed within 180 days after notice to the applicant of an adverse decision, the Chief of Engineers may authorize acceptance of a late-filed appeal under some conditions. Receipt of a late-filed appeal should be reported to HQDA (DAEN-REH-A), Washington, D.C. 20314, with a description of all attendant circumstances, prior to processing any such appeal.

[38 FR 14239, May 31, 1973, as amended at 44 FR 16911, Mar. 20, 1979]

§ 641.294 Processing of appeals.

(a) Appeals will be processed through channels to HQDA (DAEN-REH-A). An attempt will be made to resolve the matter at each level of review. If a proposed solution at any level is satisfactory to the applicant, the case will be considered closed without further processing.

(b) After receipt of the appeal, the alleged errors cited by the applicant and any additional information furnished by him in support of his appeal will be investigated promptly by the District Engineer. A report will be prepared, which will include a brief outline of the facts upon which the application is based, the initial decision from which the applicant has appealed, the basis for appeal, the scope of the investigation, factors considered in reviewing the case, the decision on appeal, and the reasons in support thereof.

(c) The applicant shall have the right to request a conference concerning his appeal with the reviewing official concerned at any level of review and to present any evidence relevant to the appeal at any time prior to action by such official. The applicant will be promptly notified by the reviewing official as to the decision in his case at each stage of the appeal proceeding.

(d) An appeal assembly will be prepared in sufficient copies to provide one copy for the next higher level of review and two copies (including original papers where available) for submission to OCE. The assembly will have a jacket cover or heavy paper backing with a suitable fastener at the top. It will consist of the following items, which will be assembled in the order shown below with such variations or additions as circumstances may require:

(1) Report of review.

(2) Written appeal and amendments.

(3) Application with attachments.

(4) Pertinent correspondence in chronological order.

(5) Any other documents and information which have a significant bearing on the case.

§ 641.295 Review of appeal by the Division Engineer.

(a) The Division Engineer will review the appeal as expeditiously as possible to insure that:

(1) The District Engineer's decision on the appeal is in accordance with the law and existing regulations; and

(2) The appeal assembly contains the necessary information in support of the decision and has been assembled as required by this regulation.

(b) If the Division Engineer concurs in the recommendation of the District Engineer, the assembly, with his comments and recommendations, will be promptly forwarded to HQDA (DAEN-REH-A). If the Division Engineer does not concur in the District Engineer's recommendation, the assembly will be returned to the District Engineer for further consideration or will be submitted to the Chief of Engineers, as may be appropriate. In the event the Division Engineer determines that favorable action is warranted on the appeal, he is authorized to direct such a solution.

§ 641.296 Final review of appeal by OCE.

Authority to make determinations on appeals has been delegated to the Chief of Engineers and his Director of Real Estate. If the position of the Division Engineer is not concurred in, the assembly will be returned for further consideration or for a directed solution. If the appeal is denied, the applicant will be promptly notified. This will constitute the final administrative review of the applicant's appeal and the pertinent correspondence, including a copy of the appeal assembly with original papers, will be sent to the District Engineer for filing.

§ 641.297 Dissemination of decisions.

Except as authorized by OCE, the District Engineer will not refer to appeal decisions in letters sent to other applicants.

PART 642—FACILITIES ENGINEERING, NATURAL RESOURCES—LAND, FOREST AND WILDLIFE MANAGEMENT

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Subpart A—General

§ 642.1 Purpose.

This regulation sets forth policy, procedure and responsibilities for the conservation, management and restoration of land and the renewable natural resources thereon consistent with the military mission and in consonance with national policies. Supporting guidance and details are delineated in Department of Army Pamphlet 420-7. The scope includes, to the extent that it is compatible with the mission, the conservation, management and utilization of the soils, water areas, croplands, grasslands, rangelands, forests, and fish and wildlife species.

§ 642.2 Applicability.

(a) This regulation applies to all commanders of major Army commands (MACOMs), field operating agencies, installations and activities under control of the Department of the Army by ownership, lease, or similar instrument, under the following conditions of use:

(1) Installations and activities in active use by the Army, those held in an inactive or standby condition for future active use by the Army, and those in an excess category (see AR 405-90, for further guidance with respect to excess properties).

(2) Federally operated installations and activities, or portions thereof, which are in full-time or intermittent use by the National Guard, or which are being held by the Department of the Army for use by the National Guard.

(3) Installations and activities, or portions thereof, which are in full-time or intermittent use by the Army Reserve or ROTC.

(b) This regulation does not apply to:

(1) Civil Works functions of the Corps of Engineers.

(2) Facilities occupied by Army activities as tenants when real property accountability and control is vested in another military department or Government agency, such as the General Services Administration (GSA).

(c) Nothing contained in this regulation or in Cooperative Plan Agreements negotiated with State and Federal authorities shall modify any rights granted by treaty or otherwise to an Indian tribe or to members thereof.

§ 642.3 Objectives.

Objectives are to:

(a) Develop, initiate, and maintain progressive programs for land management and utilization.

(b) Maintain, protect and improve the environmental qualities, esthetic values and ecological relationships by:

(1) Protection of real estate investment from depreciation.

(2) Compliance with environmental protection and enhancement policies and procedures as outlined in AR 200-1.

(3) Protection and improvement of the natural beauty of the landscape.

(4) Improvement of the appearance of installations and facilities by appropriate landscape development.

(5) Prevention of damage and destruction of valuable natural resources from fire, insects and disease.

(6) Protection of plants and animals and the habitat they depend upon, especially endangered and/or threatened species.

(7) Responding to the increasing need for food, fiber and timber products and outdoor recreational opportunities by managing lands capable of producing these resources as is consistent with the assigned military mission.

(8) Conducting training and field exercises in a manner which will least endanger the environment while still accomplishing training objectives.

(9) Protection of environmentally sensitive areas, such as: flood plains, wetlands, steep slopes, aquifer recharge zones and natural areas.

§ 642.4 Responsibilities.

Responsibilities for the Natural Resources Management Program are assigned as follows:

(a) The Chief of Engineers will:

(1) Provide staff supervision of the Department of the Army Natural Resources Program. Formulate HQDA policies, objectives, criteria, and standards for this program Army-wide.

(2) Conduct staff visits as prescribed in AR 420-10.

(3) Provide technical assistance to commands.

(b) MACOM and field operating agency commanders will:

(1) Provide command and technical supervision of the Natural Resources Management Program at installations under their command jurisdiction.

(2) Conduct staff visits as prescribed in AR 420-10.

(3) Staff with appropriate professional natural resources personnel who will:

(i) Review technical adequacy of installation natural resources plans, programs, projects, reports, environmental impact analyses and the equitable allocation of manpower, materials, equipment and funding requirements.

(ii) Maintain surveillance over land utilization and management.

(iii) Appraise and initiate training programs essential to maintain technical capability of personnel engaged in natural resources management activities.

(iv) Review proposals for use of restricted use and nonstandard chemicals and equipment in vegetative management and approve as appropriate.

(v) Recommend for certification, in accordance with AR 420-76, installation personnel who have been found competent by examination and on-the-job training to use herbicides, fungicides, growth regulators and other chemicals used in vegetative management.

(vi) Provide technical assistance to installations.

(vii) Maintain professional proficiency by attendance and participation at professional meetings and keep abreast of new developments.

(viii) Coordinate with other agencies engaged in natural resources management.

(4) Review and approve, as appropriate, timber available for harvest when not within the installation commander's authority.

(5) Review outdoor recreation plans which involve the use of natural resources to insure compatability with the Natural Resources Management Plans and programs and the Installation Master Plan.

(c) Installation Commanders will:

(1) Provide for the funding, staffing, and resources required to effectively manage the natural resources on his installation.

(2) Plan land utilization to avoid or minimize adverse effects on environmental quality.

(3) Where applicable, enter into a Cooperative Plan Agreement or Memorandum of Understanding with State and Federal conservation agencies for the conservation and development of fish and wildlife, soil, outdoor recreation and other resources.

(4) Appoint and assure the functioning of a Natural Resources Conservation and Beautification Committee where applicable.

(d) Facilities Engineer will:

(1) Manage all phases of the Natural Resources Program on the installation.

(2) Provide for training of personnel.

(3) Coordinate with local, State and Federal governmental and civilian con-

servation agencies relative to the installation natural resources program.

Subpart B—Explanation of Terms

§ 642.11 General.

For the purpose of this regulation, the following explanation of terms will apply.

§ 642.12 Natural resources.

The viable and/or renewable products of nature and their environments of soil, air and water. Included are the plants and animals occurring on grasslands, rangelands, croplands, forests, lakes, and streams.

§ 642.13 Conservation.

The protection, improvement and use of natural resources according to principles that will provide optimum public benefit and support of the military mission.

§ 642.14 Multiple use.

The integrated management of all natural resources, each with the other, to achieve the optimum use and enjoyment while maintaining the environmental qualities, ecological relationships and esthetic values in proper perspective.

§ 642.15 Land management.

The planning and execution of programs to improve, utilize and maintain all land and water areas for the greatest net public benefit while supporting the military mission. Included are subordinate land uses that are mutually compatible and consistent with maintaining environmental qualities.

§ 642.16 Forest management.

The science, the art and the practice of managing and using for human benefit the natural resources that occur on or in association with forest lands.

§ 642.17 Timber management.

The conduct of work necessary to produce and identify salable wood products on those forest areas that can be managed for profitable growing of sawtimber, pulpwood poles, ties, posts, piling and other timber products on a sustained yield basis.

§ 642.18 Wildlife management.

The practical application of scientific and technical principles to wildlife populations and habitats so as to maintain such populations essentially for ecological, recreational, and/or scientific purposes.

§ 642.19 Grounds.

All land and water acreage for which an installation commander has responsibility (including satellite areas). Grounds are grouped into the following three categories:

(a) *Improved grounds.* This category includes acreage on which intensive maintenance activities must be planned and performed annually as fixed requirements. Activities include mowing, irrigation, fertilization, cultivation, aerification, seeding, sodding, spraying, pruning, trimming, weed, dust and erosion control, drainage, planting for landscape effect, wind and sound abatement and other intensive practices.

(b) *Semi-improved grounds.* This category includes areas on which periodic recurring maintenance is performed but to a lesser degree than on improved grounds. Practices normally include such cyclic variables as soil sterilization, weed and brush control, drainage maintenance, and mowing for fire protection. Semi-improved grounds acreage may be combined with improved grounds acreage for reporting purposes when only two categories of grounds (improved and other than improved) are used.

(c) *Unimproved grounds.* All other acreage (including forest land, areas under buildings and surfaced areas), not classified as improved or semi-improved. Practices and intervals of attention are generally unpredictable such as might evolve from mission activities; soil, water and wildlife conservation, flood, fire, insects or disease epidemics.

§ 642.20 Commercial forest land.

Land which is capable of economically producing crops of industrial wood in excess of 20 cubic feet per acre per year under management and is not programmed for another use that would preclude future forest development. Acreage classification will also depend upon products produced and available markets. Normally, land areas of less than 100 acres total forest land for an installation will not be classified as commercial forest land.

§ 642.21 Environmental quality.

The development and maintenance of harmonious interaction between man and that part of the world in which living organisms can sustain their kind.

(a) Environmental Impact Assessment (EIA). An analysis of a proposed Army action which serves as the basis for determining whether there will be a significant impact on the environment. Maintained in the installation files and included with proposal/project submissions if determined that no significant impact will occur.

(b) Environmental Impact Statement (EIS). A formal document that describes the environmental impacts and reasonable alternatives of a major Army action. A final EIS must be submitted by the proponent of the action through command channels to HQDA (DAEN-ZCE) Washington, DC 20310 for review and filing with CEQ prior to making a decision and the initiation of any action (Chapter 2, AR 200-1).

§ 642.22 Sustained yield.

The production of renewable resources a land or water area can maintain at a given intensity of management.

§ 642.23 Endangered and threatened species.

(a) *Endangered species.* Those plants and animals which are in danger of extinction throughout a significant portion of their ranges as listed by the U.S. Department of the Interior.

(b) *Threatened species.* Those plants and animals which are likely to become endangered within the foreseeable future throughout a significant portion of their ranges as listed by the U.S. Department of the Interior.

§ 642.24 Land use capability.

The classification of land according to its ability to support a designated use.

§ 642.25 Coastal Zone.

The coastal waters (including the lands therein and thereunder) strongly influenced by each other and in proximity to the shorelines of the several coastal states. Includes islands, transitional and intertidal areas, salt marshes, wetlands, and beaches (Pub. L. 92-583).

§ 642.26 Coastal State.

A state of the United States in, or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes. The term also includes Puerto Rico, the Virgin Islands, Guam, and American Samoa (Pub. L. 92-583).

§ 642.27 Greenhouse.

A building designed for producing or protecting plants and normally provided with a heating unit.

§ 642.28 Lathhouse.

A structure which is constructed for the most part of spaced wood or metal lath, tropical leaves or fibers, or similar materials, and is designed for producing or protecting plants.

§ 642.29 Nursery.

An outdoor area where trees, shrubs, turf grass, or flowers are produced or held for transplanting.

§ 642.30 Prescribed burning.

Skillful application of fire to natural fuels under conditions of weather, fuel moisture, soil moisture, etc., that will allow confinement of the fire to a predetermined area and at the same time will produce the intensity of heat and rate of spread required to accomplish certain planned benefits to one or more objectives of silviculture, wildlife management, grazing, hazard reduction, etc. Its objective is to employ fire scientifically to realize maximum net benefits at minimum damage and acceptable cost.

§ 642.31 Cooperative plan agreements.

(a) A plan for the management of fish and wildlife resources on an installation which has been mutually agreed upon by the Installation Commander, Regional Director, U.S. Fish and Wildlife Service, and the State Fish and Wildlife Agency (16 U.S.C. 670).

(b) A plan for the development, enhancement, operation, and maintenance of public outdoor recreation resources on an installation which has been mutually agreed upon by the Installation Commander, Regional Director, Bureau of Outdoor Recreation, and the appropriate State Agency (16 U.S.C. 670c).

§ 642.32 Special State permit.

Prepared and issued by the installation in accordance with 16 U.S.C. 670 and the cooperative plan agreement to individuals participating in hunting, fishing, or trapping activities. Valid only on the installation where issued. A fee is usually collected and used for fish and wildlife management activities in accordance with the Cooperative Plan Agreement (§ 642.31(a) above).

Subpart C—Land Management

§ 642.41 General.

Land management operations will be consistent with modern conservation and land use principles which are continuously applied in an orderly and timely manner. Carrying out national land use and conservation policies is required on all Federal lands to the extent practicable and without affecting the assigned mission. Commanders will actively cooperate with local, State and Federal organizations in the carrying out of national land use and conservation policies. All land management operations will be conducted as a facilities engineering activity in accordance with accepted scientific and professional practices.

§ 642.42 Staffing.

(a) Since the natural resources disciplines encompassed within this regulation are sciences, commanders will establish the optimum staffing of professionally trained personnel (e.g., agronomist, forester, wildlife manager, landscape architect, soil conservationist, agricultural engineer, horticulturist) to insure necessary technical guidance in the planning and execution of the Natural Resources Program. Commanders will also seek supplementary aid from appropriate natural resource agencies (Federal, State and local) for technical assistance.

(b) Each major command and installation having jurisdiction over substantial acreage will provide technically qualified and experienced natural resources management personnel to act as a focus for all natural resources management activities. Major commands with both land and forest management programs should staff with a minimum of one agronomist and one forester. Number and discipline of installation personnel will be dependent upon scope of programs. Installations having 1000 acres or more of improved grounds and 5000 acres or more of remaining acreage will be responsive to the above criteria. Smaller installations may be responsive based on intensity of requirements. Qualifying experience will include broad academic training in plant sciences, soil, water and vegetative management and work experience commensurate with the circumstances. Personnel will keep abreast of current developments through coordination with local agencies involved in natural resources management and attendance at professional meetings. See DA PAM 420-7 for additional guidance in resource requirements.

§ 642.43 Training.

(a) The facilities engineer will provide for periodic and comprehensive technical instruction and training of personnel.

(b) Personnel engaged in poisonous plant and weed control operations (including control of objectionable trees, brush, and aquatic plants) require special training in handling toxic herbicides and associated equipment. Training and certification procedures are given in AR 420-76.

(c) Persons engaged in the care and maintenance of lawns, trees, shrubs and other landscape plants should participate in training relating to land preparation, soil management, fertilization, pruning, spraying and other horticultural skills.

(d) Maximum utilization will be made of locally available training (e.g., extension service, university, professional and trade organizations, government, commercial) and that offered by the armed services.

§ 642.44 Contracting.

Frequently work by installation forces must be supplemented by contracts. Typical work which can be performed by contract when qualified contractors are available includes grass mowing, application of herbicides, lime and fertilizer, seeding and sodding, landscaping, and reforestation. Determinations made on methods of performance (in-house versus contract) must adhere to the requirements of AR 235-5. Contracts will be utilized when economically beneficial to the government or beyond the capability of in-house forces.

§ 642.45 Mission requirements for the land.

The installation commander will plan land utilization with an understanding of the potential environmental effects of proposed actions. Whenever possible, mission requirements for the land will avoid or minimize adverse effects and restore or enhance environmental quality.

§ 642.46 Memorandums of understanding.

Memorandums of understanding have been established between the Department of Defense and the Departments of Agriculture (27 March 1963) and Interior (11 July 1960). The memorandums authorize execution of cooperative agreements in attainment of mutual conservation objectives. The installation commander may develop cooperative agreements with:

(a) Department of Agriculture functioning through the Agriculture Research Service, the Soil Conservation Service, and the Forest Service for the development, protection and conservation of forest and other vegetative cover resources, for soil and water conservation, and for research relating thereto.

(b) The Department of the Interior functioning through the U.S. Fish and Wildlife Service for the conservation of fish and wildlife resources.

(c) Assistance may also be obtained from other government agencies not specifically included in the above memorandums of understanding (e.g., Agricultural Extension Service, Bureau of Outdoor Recreation, Bureau of Land Management, National Park Service).

§ 642.47 Installation Natural Resources Conservation and Beautification Committee.

Installation commanders having active programs or the potential for programs within the concept of this regulation will appoint a Natural Resources Conservation and Beautification Committee.

(a) The Committee functions are for the purpose of:

(1) Assuring continuous planning and balanced application of the natural resources program.

(2) Planning, promoting, and fostering natural beauty and environmental protection and enhancement programs both on base and in cooperation with local communities.

(b) The Committee will include, but not be limited to the commander, the facilities engineer, the natural resource management personnel (agronomist, wildlife manager, forester, landscape architect soil conservationist), environmental coordinator, entomologist, provost marshal/security officer, operations, safety, legal, medical, recreation services; and veterinarian personnel; and a representative of the installation rod and gun club. When feasible, representatives of Federal and State natural resources agencies, and local civilian conservation groups, will be invited to attend committee meetings as guests.

§ 642.48 Access to military lands and waters.

(a) *By the public.* (1) Installation commanders will provide for controlled public access at Department of the Army installations and facilities containing land and water areas suitable for the recreational use and enjoyment of the public. Such access will be within manageable quotas, subject to safety requirements and military security, and at such times as such access can be granted without bona fide impairment of the military mission, as determined by the installation commander. Opportunities for recreational use by the public of military lands and waters must be equitably distributed by impartial selection devices, such as a system based on drawings or lots, or a system based on the principle of first come, first served.

(2) When all public access must be withheld, the reasons must be substantiated by a statement incorporated in the Cooperative Plan Agreement required between the installation commander, the State fish and wildlife authorities, and the U.S. Fish and Wildlife Service.

(b) By Federal and State conservation officials.

(1) Installation commanders will provide installation access, subject to safety requirements and military security, for:

(i) Designated State fish and wildlife or conservation officials at such times and under such conditions as mutually agreed between the installation commander and the governor of the state in which the installation is located.

(ii) Accredited conservation representatives of Federal agencies furnishing professional advice and technical assistance under this regulation, in accordance with appropriate arrangements.

(2) Federal and State conservation officials provided installation access will be issued an Identification Card and Pass Permit (DD Form 1221) by the installation commander for use under terms specified in the Cooperative Plan Agreement. Preparation of photographs, lamination, accountability, loss, surrender, and disposition will be in accordance with the general procedure in AR 606-5. Provisions of the Privacy Act of 1974 (5 U.S.C. 552a) will be complied with.

§ 642.49 Multiple use.

In applying the multiple use concept, special attention will be given to environmental factors, recreation, land use capability, and the incorporation of conservation measures in the development, design, construction, and maintenance of installations. Consideration will be given to all demands for use of the land and water resources with optimum use being made when consistent with the military mission and sound conservation and environmental concerns. Areas required to support the military mission can often concurrently be used for forest, fish and wildlife, agricultural outleases and recreational programs. Areas will not be set aside for an exclusive use (e.g., wildlife preserve, forest preserve, natural areas) without written approval by HQDA (DAEN-FEB). The exploitation and development of mineral resources is the responsibility of the U.S. Department of the Interior when the property is available for this purpose (AR 405-80).

§ 642.50 Inventory and classification.

The initial step to be taken in the development of a multiple use natural resources management program requires an inventory and classification of the resources present and their status. The inventory shall identify and evaluate the condition and potential of wetlands, marine and estuarine areas, fresh water, forest land, grasslands, scenic and natural areas, aesthetics and any other significant environmental element. Inventories will also identify endangered or threatened species of flora and fauna and archaeological and historical sites. When in-house capability is not adequate to accomplish this task, maximum use should be made of assistance from the MACOM and cooperating local agencies.

§ 642.51 Land use limitations.

Determination of the most environmentally acceptable land use is dependent upon such factors as soil, water, vegetation, indigenous fauna, climate, and topography. Each of these factors, alone or in combination, can limit the use of an area and must be considered during the assessment of operations, maintenance, development, and construction activities. Interpretation of soil capability and climatic data by experienced, professional personnel will provide information for determining land use limitations and capability for timber production, wildlife habitat, recreation, agricultural outleasing, military operations, and construction. Commanders may request the assistance of the local soil conservation district regarding soil information and surveys. Land uses which have a detrimental effect on natural resources, or the potential for such an effect, will be avoided. When operations require a land use which is not compatible with the environment, measures will be taken to protect adjacent land and water resources.

§ 642.52 Land productivity.

On lands controlled by or owned by the United States or any of its agencies, it is the declared national policy to:

(a) Reduce exploitation, wasteful and unscientific use of the natural resources.

(b) Preserve and improve soil productivity.

(c) Where feasible, to contribute to the social needs and a continuous and stable supply of food, fiber and timber products through economic use and conservation of the land.

§ 642.53 Leases, easements and other special land uses.

(a) *Agricultural leases.* (1) Military land will be constantly examined, to determine what areas, if any, can be made available for outleases. In accordance with the concept of multiple land use, areas which are required to support the military mission may also be outleased for agricultural purposes. The installation commander will:

(i) Prepare reports of availability of land for outleasing in accordance with procedures given in AR 405-80.

(ii) Include with the report of availability appropriate portions from the natural resources management plan which pertain to the management of the area made available. Also include any other technical provisions outlining conservation measures and practices to be performed by the lessee on the area to be leased which will assure the maintenance and/or improvement of soil productivity and the associated environment.

(iii) Insure that outleased areas are available to the maximum extent practicable for concurrent compatible uses.

(iv) Periodically inspect outleased lands to insure compliance with maintenance and conservation requirements and report noncompliance to the District Engineer for enforcement.

(v) Insure that consideration is given to exclude economically productive hardwood timber stands from livestock grazing.

(vi) Provide for the maintenance, protection, repair and restoration by the lessee of the area leased.

(2) The MACOM agronomist will review all technical provisions outlining land use and conservation practices to assure their compliance with good agricultural and environmental concepts.

(3) Changes and amendments to existing leases which affect the conservation and management practices, including maintenance activities performed, will be a thoroughly coordinated procedure involving the installation, the MACOM agronomist, and the District Engineer.

(4) Outgrant holders desiring to apply pesticides or conduct animal damage control on Army property, or to contract for such work, must first submit details of the proposed programs for review and approval, as appropriate, by the MACOM agronomist/entomologist. Excluded are outleases whose contract contains provisions for lessees to assume full responsibility for the application of pesticides and animal damage control on their leases in accordance with the provisions of applicable Federal laws and directives (see AR 420-76). Supplemental agreements to existing leases should be negotiated to amend them so as to comply with this provision. All pesticide uses will be reported by the responsible installation in accordance with AR 420-76.

(b) For rights-of-way or easements for powerlines, communication facilities, pipelines and various purposes, see AR 405-80.

§ 642.54 Dust and erosion control.

Installation sources of dust, runoff, silt, and erosion debris will be controlled to prevent damage to land and facilities including adjacent property. A protective cover (e.g., vegetation, gravel, mulch, pavement) will be maintained at all times unless bare ground is essential for mission requirements. When bare ground is necessary, other measures (check dams, diversions, etc.) will be used to control dust and erosion.

§ 642.55 Fire protection.

Installation land and facilities will be cleared of fire hazards and the vegetative growth controlled to the degree essential to the safety of the installation and its natural resources. Blading or soil sterilization of firebreaks to mineral soil will be avoided if excessive erosion results from such action. Control of vegetation by mowing, grazing and other means will be used as an alternate to mineral soil firebreaks and the use of herbicides where possible. Prescribed burning is an effective and efficient means to reduce or prevent the accumulation of hazardous fuels and will be used where it is recognized land management practice for natural resources management and fire protection. The decision to use prescribed burning will be based on the safety hazard involved, the hazard that will develop if burning is not accomplished, and applicable state and local regulations. Installation activities making use of the land (e.g., testing, training, maneuvers) will be constantly aware of fire hazards and adjust their programs, including suspension of activities, to avoid high hazard areas and/or periods. (See DA PAM 420-7.)

§ 642.56 Weed control.

(a) Objectionable plant growth will be controlled by mowing, use of EPA registered and approved herbicides, cultivation, or other means. Special precautions will be taken in the application of toxic pesticides to safeguard personnel from contact and prevent indirect contact and/or windswept contamination of livestock browse areas, agricultural crops, or ornamental plants. For safety precautions see TMs 5-629 and 5-630 and AR 385-10. Herbicides will only be applied by or under the direct supervision of a trained and certified competent applicator.

(b) The MACOM agronomist/forester is responsible for the technical supervision and monitoring of the weed control program. The procedures for handling, recording and reporting pesticides, contained in AR 420-76, apply also to herbicides. Herbicide use activities will comply with AR 200-1.

(c) Technical provisions of all proposed contracts for pesticide applications used in vegetative management will be reviewed and approved, as appropriate, in writing by the MACOM agronomist/forester. Supervision and technical monitoring of contracts will be by certified personnel.

§ 642.57 Management records.

Installation records of land management activities will be developed and maintained on an annual (fiscal year) basis (e.g., pesticides, plantings, lime and fertilizer, timber harvest, etc.).

§ 642.58 Inspections and technical assistance.

MACOM and field operating agency commanders will make scheduled and special visits to installations to insure compliance with this program and provide technical assistance relative to natural resources (AR 420-10).

§ 642.59 Program evaluation.

Appropriate Headquarters, Department of the Army natural resource management personnel will make scheduled visits to MACOM, field operating agency commands and appropriate installations to ascertain degree of conformity with technical policies, standards, and procedures, and to provide on-site technical consultant service in resolving technical problems relative to natural resources.

Subpart D—Grounds Maintenance

§ 642.71 General.

Grounds will be maintained at the levels and intensities necessary to meet the designated use criteria, protect and enhance the natural resources, and insure a pleasing appearance in harmony with the natural landscape. Designated turf areas will be seeded, renovated, fertilized, and irrigated to the degree required to maintain a permanent vegetative cover of desirable plants necessary to support the intended use. Guidance available from local agricultural agencies and universities will be used in determining the most adapted species of vegetation and the maintenance practices necessary to meet the designated use. Improved grounds will be maintained at a level comparable with similar public facilities in the area.

§ 642.72 Ground maintenance responsibilities.

(a) Government-owned facilities. Except as specified in paragraphs (a) (1) and (2) of this section, grounds maintenance services are facilities engineering responsibilities:

(1) Family Housing. See Chapter 3, AR 210-50 for command and occupant responsibility for Government-owned family quarters.

(2) Bachelor Housing. (i) Separate Lawns. For Government-owned quarters having separate lawns (e.g., separate dwellings or side-by-side duplexes), occupants will mow lawns with power or hand-pushed mowers, irrigate lawns and shrubs, cultivate shrubs, edge adjacent to paved surfaces and flower or shrub beds, and remove leaves, paper, bottles, stones and other litter. Boundaries should be established which clearly delineate the extent of grounds assigned to each occupant for use and maintenance. Boundaries shall correspond to the limits of the logical yard of each dwelling but will normally be not more than 50 feet from the dwelling. Grounds maintenance outside these boundaries may be performed by the installation. (For "Self-Help Program" criteria, see AR 420-22.)

(ii) Communal lawns. For other Government-owned housing having lawns common to more than one occupant (e.g., barracks, BOQ's and apartments), occupants will perform grounds maintenance services as in paragraph (a)(2)(i) of this section; if impracticable, these services will be performed as a facilities engineering activity.

(b) Leased Facilities. Except as specified in paragraphs (b) (1) and (2) of this section, grounds maintenance services are lessor responsibilities.

(1) Family housing leases. See Chapter 15, AR 210-50 for command and occupant responsibility for leased quarters.

(2) Other leases. (i) In the United States. (A) Separate lawns. For Government-leased housing and quarters having separate lawns (e.g., separate dwellings or side-by-side duplexes), occupants will perform grounds maintenance services as set forth in § 642.72(a)(2)(i), using tools furnished by the Government.

(B) Communal lawns. For other Government-leased housing having lawns common to more than one occupant (e.g., BOQ's and apartments), lease instruments will delineate lessor and Government responsibilities.

(ii) In oversea areas. Responsibilities for grounds maintenance of Government-leased housing facilities will be predicated upon the customs and practices of the country; lease instruments will specifically delineate lessor and U.S. Government responsibilities.

§ 642.73 Cemeteries.

The installation commander has jurisidiction over post, private, and prisoner-of-war cemeteries located on Army installations, and is responsibile for maintenance and operation as follows:

(a) At active installations. (1) Post cemeteries. (See AR 210-190.)

(i) Standard of maintenance will be equal to those authorized for other intensively maintained grounds. Areas will be protected as required by fencing, and will be kept orderly. Care will be taken to prevent damage to monuments, markers, and headstones. These will be kept clean and will be reset and realined when necessary.

(ii) As required, graves will be opened and closed, temporary headboards provided and placed, and permanent headstones set.

(2) Private cemeteries. It is Department of the Army policy to acquire title to all private cemeteries within boundaries of installations owned in fee by the United States. For the purpose of this regulation, a private cemetery is any cemetery or burial plot on the installation which, regardless of present ownership, was initially owned

by a person or agency other than the United States.

(i) When the deed of conveyance is silent with respect to maintenance or access to a private cemetery, or separate agreements with private parties have not been made, the installation commander will be responsible for maintenance, as follows: Excessive shrubs and trees will be removed; fencing for protection when required; headstones destroyed or seriously damaged by military activity will be replaced; and grounds will be kept clean and orderly. Public access will be allowed when consistent with safety and military security.

(ii) When the deed of conveyance or separate agreement with private parties requires the United States to provide maintenance or access, standards of maintenance in paragraph (a)(2)(i) of this section apply.

(3) Prisoner-of-war cemeteries. Standards of maintenance in paragraph (a)(2)(i) of this section apply.

(b) At inactive installations. For the three types above minimum standards of maintenance apply. Included is a periodic mowing, removal of brush, repair of fences, and resetting of headstones and markers, as required to maintain a neat appearance. These standards will also apply to cemeteries that remain after real estate disposal action has been completed for the remainder of the installation.

(c) Pet cemeteries. Maintenance of pet cemeteries is not a facilities engineering responsibility.

§ 642.74 Gardens.

Preparation (plowing, harrowing and discing) of a community type garden in excess of one-quarter acre in size may be performed as a facilities engineering function. Preparation of smaller garden plots and the cultivation, maintenance, harvesting, and clean-up of vegetable gardens will not be accomplished as a facilities engineering responsibility.

§ 642.75 Greenhouses and lathhouses.

(a) The maintenance of greenhouses and lathhouses designated by The Surgeon General for therapeutic purposes, and by The Provost Marshal General for vocational training purposes at United States disciplinary barracks, is a facilities engineering activity (including the provision of utilities necessary for operation). Furnishing of operating (including supervisory) personnel is the responsibility of the using service.

(b) Appropriated funds will be used for maintenance and operational support of only those greenhouses and lathhouses designated as set forth in paragraph (a) of this section.

§ 642.76 Irrigation.

(a) Irrigation will be accomplished where supplemental water is essential to establish and support lawns and other improved types of vegetation.

(b) Irrigation water will be limited to that necessary to provide minimum requirements to support vegetation planting in an acceptable condition. State university recommendations will be utilized in determining the amount of water necessary to meet these standards.

(c) Underground irrigation systems will comply with guidance in TM 5-813-1.

§ 642.77 Nurseries.

Expenditure of appropriated funds is not authorized for the operation of nurseries. Trees and shrubs will be obtained from commercial nurseries and Federal and State agencies when available. If economical, plants from natural wooded areas may be used providing they can be dug with sufficient roots and soil to meet commercial nursery standards (TM 5-630).

§ 642.78 Landscape plantings.

(a) All planting, pruning, cultivation, and other maintenance by whomsoever done, will conform to criteria in TM 5-630.

(b) Trees and shrubs will be removed if they have become crowded, or, if they are not: essential for shade, windbreaks, screening of unsightly objects, or erosion control; complementary to architectural features of the building area; adapted to the locale.

(c) Existing and new foundation plantings will be limited to the minimum needed to complement the building design. Normally not more than one-fourth of an individual foundation perimeter will be planted with shrubs or trees.

(d) The expenditure of appropriated funds for shearing hedges and ornamental plants into formal or decorative designs is not authorized except as specifically prescribed in the approved planting plan.

(e) Climbing vines, shrubs, and trees which block or damage windows, eaves, gutters or other construction components will be eliminated.

(f) Plantings which reduce sight distances or otherwise constitute a traffic hazard near street intersections, walks, and drives will not be permitted.

(g) Non-essential plantings which result in excessive lawn maintenance will be removed. Painting or whitewashing of tree trunks is not authorized.

(h) Planting and maintenance of flowerbeds, rose gardens, and nut or fruit trees for their edible products, except for wildlife food purposes, are not facilities engineering responsibilities.

Subpart E—Forest Management

§ 642.91 General.

Effective forest management provides for the sustained production of timber and related natural resources values such as natural beauty, recreation, wildlife, watershed protection, and the yield of high quality water. The optimum yield of each of these forest values on the same area is possible provided appropriate compromises are made in the various parts of the Natural Resources Management Plan. Forest Management activities will, when pertinent, include:

(a) Cultural treatment designed to improve timber quality and quantity which are within the realm of economic feasibility.

(b) Use of harvesting or treatment specifications designed to attain multiple use and sustained yield and to improve troop training areas, watersheds, wildlife habitat and to complement natural beauty values along scenic corridors.

§ 642.92 National forest land.

On those installations which contain National Forest land, nonmilitary utilization of that land will comply with U.S. Department of Agriculture policy (36 CFR Part 261).

§ 642.93 Funding.

(a) Forest management financial support is derived primarily from funded reimbursement from proceeds of sales and direct appropriated funds. Reimbursable expenses that are directly related to economic production of timber products and its harvest include: timber management, reforestation, timber stand improvement, inventories, fire protection, construction and maintenance of timber area access roads, purchase of forestry equipment and supplies, erosion control, disease and insect control, planning, timber marking, inspections, sales preparation and training of personnel in lumber and timber operations and sales. Each effort must make a contribution to the forest management operations that will produce an eventual return commensurate with the effort. Such expenses will be distributed to AR 37-100-XX account code 728012.23000 "Maintenance of Forest Areas." Command budget documents pertaining to this account will be coordinated with appropriate natural resources personnel.

(b) Costs related to purposes other than timber production and disposal do not qualify for reimbursement; e.g., costs of roads and trails for traffic or recreation, training area improvement, beautification projects, screens or buffer zones, drainage, fire protection on noncommercial forest land and other costs that would normally be incurred even if there were no timber production and harvest activities.

(c) Expenses eligible for reimbursement on non-commercial forest land are limited to that directly related to timber sales; e.g., marking, preparation of declaration of availability, and sales inspection.

(d) Request for the use of reimbursable funds (728012.23000) for minor construction projects and equipment purchases must be submitted to DOD for review and approval. All minor construction projects, as defined in AR 415-35, will be prepared in accordance with the format given in AR 415-35 and submitted to HQDA (DAEN-FEB) as they are developed. Programs for the purchase of items of equipment costing in excess of $500 each will be forwarded annually to HQDA (DAEN-FEB) for review and forwarding to DOD. Programs will show individual items of equipment, cost, and justification for purchase.

(e) Guidance relating to management plans, declaration of timber availability, staffing, and additional information and guidance on budgeting and financing, including the annual work plan, is contained in DA PAM 420-7.

§ 642.94 Forest inventories.

(a) Volume Inventories will be made and kept current for all installation forest lands managed for timber production. This will be accomplished by technically qualified forestry personnel.

(b) Inventory systems will be submitted to the MACOM for approval prior to implementation.

§ 642.95 Harvesting timber.

(a) Approval authority. (1) The MACOM will review and approve, as appropriate, timber available for harvest in any amount not within the installation commander's authority.

(2) Installation commanders are authorized to:

(i) Sell small volumes of standing timber that are in conformity with AR 405-90 and the installation Forest Management Plan.

(ii) Sell small volumes of forest products remaining after harvest and/or forest management operations (e.g., tops, fuelwood, greens) and from dead, dying, damaged or fallen trees resulting from fires, insects, disease or storms.

(iii) Sell pulpwood, sawlogs or other wood products from trees removed from new construction sites (e.g., utility lines, rights-of-way, building construction areas or training areas) when time does not permit or volume does not justify disposal for formal declarations of availability. Coordination must be accomplished with the construction contract to assure timeliness and to avoid conflict with contract specifications.

(b) Disposal Action. (1) Installation commanders will submit to the MACOM reports of availability for all timber planned to be harvested. See DA Pam 420-7 for preparation of reports of availability.

(2) The MACOM will take appropriate action within authority in paragraph (a)(1) of this section and submit approved reports of availability to the appropriate division engineer for disposal action (AR 405-90).

(3) Small volumes of timber may be sold by the Defense Property Disposal Office or by the District Engineer where available at the installation. Proceeds from these sales will be deposited to Deposit Fund Account 97F 3860-5192. Additional guidance on sales by installation commanders is contained in DA PAM 420-7.

(4) Disposal of merchantable timber by destruction (e.g., burning, burying, natural decay, etc.) may be accomplished only after it has been determined that sale is not feasible.

(5) Timber or forest products may not be exchanged as reimbursement for services.

§ 642.96 Installation sawmills.

Installation sawmills and the logging operations incident thereto are not authorized except:

(a) To the degree required to train troops in specialized construction activities.

(b) When necessary to prevent the compromise of security information.

Subpart F—Fish and Wildlife Management

§ 642.111 General.

(a) The Fish and Wildlife Management program will manage the habitat consistent with accepted scientific principles and the total natural resources program. Emphasis will be placed on the maintenance and restoration of habitat favorable to the production of indigenous fish and wildlife.

(b) Installation commanders with potential for a fish and wildlife program will:

(1) Program for funds to conduct an effective program pursuant to the Cooperative Agreement.

(2) Require the optimum use and staffing of professionally trained personnel (e.g., wildlife manager) at installation having program potential.

(3) Authorize and control fishing, hunting, and trapping in conformance with Federal and State laws, local regulations and approved management plans.

(4) Establish a Fish and Wildlife Law Enforcement Program under the supervision of the installation/activity provost marshal/security officer and provide for enforcement in accordance with applicable directives and insure:

(i) Enforcement of all hunting, fishing, and trapping laws, regulations and directives,

(ii) Against unauthorized entry of individuals into restricted areas,

(iii) Control of predators as requested by the facilities engineer,

(iv) Personnel and equipment resources are available to the provost marshal/security officer for conduct of the enforcement program.

(c) Additional program guidance to installation commanders is contained in DA PAM 420-7.

§ 642.112 Authority to hunt, fish, and trap.

(a) All hunting, fishing or trapping on a military installation or facility under the control of the Department of the Army shall be in accordance with Federal laws and the fish and game laws of the State, commonwealth, or territory in which it is located (10 U.S.C. 2671).

(b) Any individual who desires to hunt, fish or trap on a military reservation must obtain:

(1) A license from the State in which the installation is located except as provided for in § 642.113 (a)(3).

(2) A special state permit (16 U.S.C. 670a) from the commander of said installation, or his designee, when such permits are required.

(c) Whoever violates a requirement prescribed under paragraph (a) or (b) of this section is guilty of an offense under 10 U.S.C. 2671(c).

(d) The commander of the installation, or person designated by him, will collect fees, where applicable, for permits they issue and will enforce such permits.

§ 642.113 Installation permits and fees.

(a) Special State Hunting, Fishing and Trapping Permits.

(1) Installation commanders will issue special State permits to individuals only when such are in possession of a valid State, territorial, or county hunting, fishing, or trapping license, as applicable except as set forth in paragraph (a)(3) of this section.

(2) These special State permits do not apply to National Forest Lands under control of the Department of Agriculture and will so state.

(3) An exception to the license requirement can be made when State laws do not grant equality of treatment to military personnel by not waivering residency requirements as specified in 10 U.S.C. 2671. Commander will make written application to HQDA (DAEN-FEB) WASH DC 20314, through appropriate channels, for authorization to issue permits to military personnel to hunt, fish or trap on the installation without securing an appropriate State, territorial, or county license.

(b) Fees. (1) The annual demand for operation and maintenance funds frequently has a negative effect on installation efforts to fulfill obligations to foster sound fish and wildlife management programs. As a consequence other fund sources must be considered.

(2) Pursuant to 16 U.S.C. 670 a-f, installation commanders:

(i) Should discuss funding aspects with the State agencies formally cooperating with the installation with a view toward amending the cooperative agreement to:

(A) Establish fees for hunting, fishing, or trapping, or

(B) Raise existing fees to levels commensurate with fees charged for comparable activities within the civilian community.

(ii) May, if agreeable to the cooperative plan agreement, issue special State permits to individuals for fishing, hunting, or trapping on that installation or facility, and require the payment of a fee therefor. (These special permits are in addition to the State license and Federal stamps as required.)

(A) Such fees are to be used on the installaton from which collected for the protection, conservation, and management of fish and wildlife, including habitat improvement and related activities, as may be stipulated in the cooperative plan, but for no other purpose.

(B) Collections and disbursements of these fees will be accounted for and reported in accordance with AR 37-100 and AR 37-108.

(iii) Will issue special State permits subject to the following criteria:

(A) Persons holding hunting, fishing or trapping permits will stand at par with each other for use privileges, except that participation of the general public will be within manageable quotas.

(B) A sliding scale of fees may be established for enlisted personnel to encourage participation.

(C) Fee charges should be commensurate with those charged for comparable activities within the civilian community.

(D) Will ascertain that the cooperative plan specifically provides, as required by 16 U.S.C. 670b, that the possession of a special permit for hunting migratory game birds will not relieve the permittees of the requirements of the Migratory Bird Hunting Stamp Act, as amended, nor of the requirements pertaining to State Law as set forth in 10 U.S.C. 2671.

§ 642.114 Cooperative plan agreement.

Cooperative Plan Agreements for Conservation and Development of Fish and Wildlife Resources will be prepared and implemented for all Category I installations (those having land and water areas suitable for the conservation and management of fish and wildlife). The Cooperative Plan Agreement will be prepared and amended as appropriate in coordination with appropriate State and Federal fish and wildlife conservation agencies and will be in agreement with the approved Natural Resources Management Plan. Guidelines for the Plan Agreement are contained in DA PAM 420-7. A copy of each Cooperative Plan Agreement, revision or amendment will be forwarded through command channels to HQDA (DAEN-FEB-N) WASH DC 20314. These plans are exempt from reports control under paragraph 7-2a, AR 335-15.

§ 642.115 Introduction of new species.

Species of fish and wildlife which are foreign to the United States will not be introduced on Army land unless approved by the US Fish and Wildlife Service, the State, and HQDA (DAEN-FEB). Introduction of species native to the United States or reintroduction of formerly indigenous species will be accomplished only upon approval of the US Fish and Wildlife Service, the State, and the MACOM and will be made a part of the Cooperative Plan Agreement. All introduction or reintroduction of wildlife species will be thoroughly assessed to determine the impact on existing flora and fauna and the installation mission before accomplished.

§ 642.116 Population control.

The objective of population control will be to maintain the wildlife population within the carrying capacity of the land and prevent health and safety hazards. Wildlife populations will be continually monitored to detect overpopulations and the potential for such. Coordination with Federal and States natural resources agencies will be accomplished regarding wildlife overpopulation determinations and control measures. Such control measures will be in accordance with applicable Federal, State and local laws. When species overpopulations cannot be reduced adequately by normal harvest measures, management practices will be changed or initiated to bring the population of that species into balance.

§ 642.117 Habitat management.

All habitat improvements will be accomplished in a manner to preserve or enhance the esthetic values and quality of the environment. Activities will be directed towards the development of native habitats and perennial plantings. Planting of annual food plots will be avoided as a major activity. First consideration will be given to the management of habitat utilized by threatened and/or endangered species and those species which are indigenous to the installation.

Subpart G—Environmental Management

§ 642.131 General.

(a) Special consideration will be given to soil and vegetation characteristics, surface and subsurface water, unique archeological and geological sites, and wildlife in the development, design, construction and maintenance of an installation, and the performance of its mission. All possible efforts will be made to protect the land and water resources so that none will be lost, degraded or destroyed. Measures will be taken to control sources of pollutants harmful to the land and its resources.

(b) Personnel will comply with the environment quality policies and procedures specified in AR 200-1 and those standards established by applicable Federal, State, interstate, or local authority.

(c) The Natural Resources Management Program will be a specific element of the assessment of continuing and planned programs as required by AR 200-1.

§ 642.132 Endangered species.

The Endangered Species Act of 1973, Pub. L. 93-205, requires all Federal departments and agencies to carry out programs for the conservation of endangered and threatened species. Installation commanders will assure that actions authorized, funded, or carried on do not jeopardize the continued existence of such endangered and threatened species. Coordination will be accomplished with appropriate staff elements for the development of programs for avoiding interference by military activities with both "on base" and "off installations" threatened or endangered species and their habitat. Cooperative agreements for the conservation and development of fish and wildlife and other natural resources will be expanded to include assistance in the development of endangered species programs. Where applicable, an inventory of endangered or threatened flora and fauna and their habitat which are indigenous to or dependent upon the installation will be developed. Consideration will be given to species protected by both Federal and State laws. Introduction or reintroduction of threatened or endangered species will be accomplished only after a thorough assessment of its impact on the military mission and operation of the installation, and concurrence by appropriate Federal and State agencies.

§ 642.133 Predators.

Concurrence by appropriate State or Federal natural resources officials must be obtained prior to performance of predator control measure. Control of predators or other animals considered to be of sanitary or health significance will be coordinated with the installation medical officer. Applicable Federal and State laws (e.g. National Environmental Policy Act, E.O. 11870, Federal Insecticide, Fungicide and Rodenticide Act) will be complied with and an environmental assessment prepared in accordance with AR 200-1 for all predator control operations.

§ 642.134 Poisonous and noxious plants.

Poisonous plants will be controlled only where they present a health hazard to personnel. Many plants contain poisonous parts or are poisonous during certain stages of growth. Destruction or eradication of these plants would not be practicable or in compliance with good conservation principles. Education of personnel to become aware of potential hazards should be accomplished in place of widespread destruction programs. Control of plants designated as noxious by Federal or State agencies will be in accordance with environmental policies and in harmony with local community programs and adjacent property owners.

§ 642.135 Pesticides.

Use of chemical pesticides for the protection and control of vegetation is permitted when other methods of control are not feasible. Pesticide application and handling will be in accordance with applicable guidance given in AR's 200-1, 420-76, TM's 5-629, 5-630, 5-632 and § 642.56 of this regulation. Aerial applications will also conform to guidance in AR 40-574. All uses of pesticides will be in strict compliance with a currently approved Environmental Protection Agency label, unless approved otherwise by the EPA or applicable Federal regulations. Only pesticides registered by EPA will be used. They will also be limited to standard items, those listed in the DOD section of Federal Supply Catalogs, unless approved in writing by the MACOM. (See AR 420-76.) Technical provisions of all proposed contracts for pesticide applications used in vegetative and wildlife management will be reviewed and approved, as appropriate, in writing by the MACOM agronomist/forester.

§ 642.136 Coastal Zone management.

Public Law 92-583, Coastal Zone Management Act, as amended, provides National policy and a program whereby coastal states can develop and establish a Coastal Zone Management Plan. All Federal lands are excluded by the Federal land exclusion provision in the Act and that exclusion encompasses all lands used by the United States without regard to the ownership or the jurisdictional status of the land. However, Federal actions in or affecting a coastal zone must, to the maximum extent practicable, be consistent with the coastal states approved plan. Activities will ensure that a State's Coastal Zone Management Plan recognizes the existence and impact of all military installations, facilities and lands, and excludes provisions for mandatory application over same. Commanders shall cooperate and coordinate with the Coastal States during all phases of Coastal Zone Management Plan formulation and implementation. Coordination will be accomplished through the Army Coastal State representative and will be limited to necessary unclassified and releasable information such as inventory and mission data, master plans, and the like.

§ 642.137 Base attractiveness and scenic values.

The "Base Attractiveness Program" gives increased attention to the enhancement of the attractiveness of military installations. The emphasis of this program is to make service life more attractive, while at the same time increase the overall value of the Army physical establishment. New construction projects will include provisions essential to base attractiveness with adequate design and funding considerations. This will include landscaping, buffer zones, screening, parks, and recreational areas as appropriate. Commanders will include the resources essential to support base attractiveness in budget estimates, projects estimates and other resource justification. Both day-to-day type operations and maintenance and project type work will be performed in a way to contribute to base attractiveness and environmental improvement. Consideration should be given to the protection of areas which have scenic, archeological, geological, or historical significance.

§ 642.138 Beach protection.

Protection of beaches on Army land is required to prevent water from flooding shore developments, military installations, inland cities, and other improved lands during storms in coastal areas. Natural and/or constructed barriers will be considered as requirements dictate. Plans for barrier construction and for any proposed alterations will be carefully studied by specially qualified experts. Consideration will be given to requirements of State Coastal Zone Management Plans.

Subpart H—Outdoor Recreation

§ 642.151 General.

Objectives and guidance relative to the Outdoor Recreation Program are provided in AR 28-1. The facilities engineer is responsible for the maintenance of recreation facilities and will be actively involved in developing the Cooperative Plan Agreement for Outdoor Recreation and the General Recreation Plan for the installation. Guidance in the planning and design of recreational facilities is found in TM's 5-5803-10, 5-803-11, and 5-803-12.

§ 642.152 Land use designation.

Recreation facilities will be based upon formal design in accordance with the Installation Master Plan. Development of the General Recreation Plan portion of the Installation Master Plan (AR 210-20) will give attention to land use capability and limitations when determining recreation activities to be conducted.

§ 642.153 Maintenance of recreational facilities.

(a) *General.* Maintenance responsibilities of the facilities engineer on recreational facilities (golf courses; badminton, tennis, and volleyball courts; baseball diamonds; football fields; playgrounds; and similar outdoor facilities) will include protection and replacement of playing surfaces, backstops, posts, fences, fixed playground equipment and other fixed items, and the measuring and original permanent marking of diamonds, fields, courts, and similar playing areas. Maintenance of remote facilities may be performed by recreation services when more economical and agreed to by the facilities engineer and recreation services. Provision and maintenance of nets and other removable items, rolling, temporary marking and detailed treatment of playing areas, and similar services will not be accomplished as a facilities engineering responsibility.

(b) *Golf courses.* Golf courses will be maintained at a standard equivalent to other improved grounds, subject to the provisions of paragraphs (b) (1) and (2) of this section. The MACOM may authorize the use of water for irrigation to the extent that existing facilities permit without interference to the normal domestic requirements of the installation. The extent of maintenance to be performed will be as follows:

(1) Unrestricted courses. Maintenance of golf courses for use of all military personnel may be performed by the facilities engineer on the roughs, fairways, and other areas and facilities not requiring specialized equipment or skills. Maintenance of greens, bunkers, traps, tee boxes, and the payment of salary for a professional greenskeeper or general superintendent is not a facilities engineering responsibility.

(2) Restricted courses. (i) Golf courses at memorially named Army hospitals restricted entirely to the training, rehabilitation, and recreation of patients may be maintained in their entirety as a facilities engineering responsibility. If the golf courses are not restricted to patients, a proportionate share of the costs, based upon the use made by patients, may be financed from appropriated funds available for maintenance of facilities.

(ii) Other golf courses restricted to club members or officers, operated as nonappropriated fund activities and for which a use fee is charged, will be maintained as a facilities engineering activity only to the extent that other improved grounds are maintained. Cost of water used for irrigation will be charged in accordance with AR 420-41.

§ 642.154 Off-road vehicles.

Use of off-road vehicles on Army lands will be in accordance with AR's 210-9 and 28-1. Soil capability and affected land and water resources will be of prime concern when areas are evaluated for use by off-road vehicles. Land and water areas designated for off-road vehicle use will be included in the Installation Natural Resources Management Plan and the Installation Master Plan. The facilities engineer is responsible for determining suitability of trails and areas and monitoring for damage, over-use, and the need for corrective action. The recreational aspects of off-road vehicle use is the responsibility of recreation services.

Subpart I—Plans

§ 642.161 General.

(a) An installation Natural Resources Management Plan will be prepared and implemented for all active and inactive installations in CONUS, Alaska, and Hawaii, meeting the criteria set forth below. The Plan will include, as appropriate, four separate parts: I Land Management; II Landscape Plantings; III Forest Management; and IV Fish and Wildlife Management. The annual work plans will be developed and maintained as the installation record of planning and approved activities and should not require additional detailed cost collection effort during the year.

(b) Cooperative Plan Agreements for Conservation and Development of Fish and Wildlife Resources will be prepared and implemented for all Category I installation (those having land and water area suitable for the conservation and management of fish, wildlife and other natural resources as determined by consultation with appropriate Federal and State fish and wildlife agencies).

§ 642.162 Criteria for the installation Natural Resources Management Plan.

(a) Part I will be prepared by installation having 500 or more acres of improved, semi-improved and unimproved grounds combined, or 50 or more acres of improved grounds.

(b) Part II will be prepared for all installations listed in Appendix A of AR 210-20 which require preparation of complete master plans. Other installation performing landscaping will prepare detailed plans to cover the work intended when other than replacement planting of like species is involved.

(c) Part III will be prepared by installations having 100 or more acres of commercial forest land.

(d) Part IV will be prepared by installations having land and water areas suitable for the management of fish and wildlife resources. Suitability will be based upon consultation with appropriate Federal and State fish and wildlife conservation agencies. Determinations of unsuitability will be submitted to the MACOM for waiver of requirement to prepare this part. This plan will complement the Cooperative Plan Agreement.

§ 642.163 Preparation.

(a) Guidelines to be used in the preparation of plans are contained in DA PAM 420-7.

(b) The Installation Natural Resources Management Plan will be prepared and kept current by qualified specialist personnel.

(c) The Cooperative Plan Agreement for Conservation and Development of Fish and Wildlife Resources will be prepared and amended as appropriate in coordination with appropriate State and Federal fish and wildlife conservation agencies.

§ 642.164 Revisions.

The Installation Natural Resources Management Plan will be reviewed annually and revised as necessary, utilizing binders which facilitate page changes. Major revisions of Parts I, III, and IV will be accomplished at least every 5 years. Landscape Planting Plans (Part II) will be revised as needed. Information such as that relating to soils, natural vegetation and environmental data, not requiring revision, should be retained in the Plan.

§ 642.165 Approval.

Each Installation Natural Resources Management Plan and major revision thereof will be forwarded to the MACOM for approval. The approved plans, together with TM's 5-630 and 5-631 will be the technical basis for installation implementation. Review, approval, and distribution of annual revisions (e.g., work plans) will be in accordance with provisions established by the MACOM.

§ 642.166 Distribution.

(a) A copy of Parts I, III, and IV of each approved Natural Resource Management Plan and a copy of each Cooperative Plan Agreement will be forwarded through command channels to HQDA (DAEN-FEB-N) WASH DC 20314.

(b) A copy of each approved major revision to Parts I, III and IV of the Natural Resources Management Plan and a copy of each amendment to the Cooperative Plan Agreement will be forwarded, as above, when revisions are made.

§ 642.167 Reports control exemption.

These plans are exempt under paragraph 7-2a, AR 335-15.

Subpart J—Conservation Awards

§ 642.171 The Secretary of Defense Conservation Award.

(a) The Secretary of Defense will annually present an award to the installation of the Army, Navy, or Air Force that conducted the most outstanding conservation program in their installaton category during the three preceding calendar years. Plaques will be presented annually to the two runner-up installations. Special recognition awards, or citations, may as appropriate be presented to additional installations for conducting meritorious natural resources conservation programs.

(b) The award will be given on alternate years to a small installation (Designated Category A) and the next year to an installation in the large category (Designated Category B). Category A installations are those with 5,000 acres or less on the main installation. Category B installations are those of 5,001 acres or greater. Category A installations will compete for the even numbered award year (e.g., 1976 award given in CY 1977) and Category B installations will compete for the odd numbered award year (e.g., 1977 award given in CY 1978).

(c) A single award may be presented each year to the individual, military or civilian who has made an outstanding contribution to the Defense Natural Resources Program during the preceding calendar year.

§ 642.172 Chief of Staff Conservation Award.

The Chief of Staff, U.S. Army, will annually present a silver plaque to the installation that conducted the most outstanding natural resources conservation program during the three preceding calendar years.

§ 642.173 Preparation.

Details regarding entry requirements, submission instructions, nomination procedure, and description of the awards, are contained in DA PAM 420-7. All applicable installations are encouraged to submit nominations through command channels.

§ 642.174 Submission of nominations.

Nominations for the installation and individual awards will be submitted to HQDA (DAEN-FEB) Washington, DC 20314 by 15 March of each year for the award period ending the previous 31 December.

(a) Headquarters, FORSCOM, TRA DOC and DARCOM may each make four nominations for each award from installations in the United States, Puerto Rico, and the Virgin Islands.

(b) Other MACOMS in the United States may submit a maximum of two nominations each for each award.

Subpart K—Installation Natural Resources Report (Reports Control Symbol DD-I&L (A)670)

§ 642.181 Purpose and scope.

(a) The report is designed to provide HQDA (DAEN-FEB-N) with data relative to the execution of integrated natural resources programs involving:

(1) Management of grounds, fish and wildlife, and forest areas.

(2) Development and conservation of natural beauty values and outdoor recreation potentials.

(3) Enhancement of environmental quality.

(b) The report is basis for:

(1) Performance evaluation and management analysis.

(2) Technical studies.

(3) Development of policies, standards and programs.

(4) Providing higher authority with information pertinent to implementation of integrated natural resources programs.

(c) The report consists of three parts with each part on a separate sheet, as follows:

Part I—Land Use and Conservation, DA Form 2785-R. Part II—Forest Management, DA Form 2785-1-R. Part III—Fish and Wildlife Management, DA Form 2785-2-R. These forms will be prepared locally on 8 x 10½ inch paper.

(d) Installations are encouraged to supplement the report with short narrative information as may be desired to more adequately depict the natural resources program.

§ 642.182 Frequency, routing and due date.

The report will be prepared at the end of each fiscal year and dispatched through command channels, in triplicate, to reach HQDA (DAEN-FEB) WASH DC 20314, within 45 days after the close of the fiscal year.

§ 642.183 Instructions for Parts I and II.

(a) Part I will be prepared by each Army installation in the United States Puerto Rico, and Panama. required to prepare the Land Management part of the Installation Natural Resources Management Plan.

(b) Part II will be prepared by each Army installation in the United States, Puerto Rico, and Panama required to prepare the Forest Management part of the Installation Natural Resources Management Plan.

§ 642.184 Instructions for Part III.

(a) Criteria. The criteria for submission of Part III will be established after consultation with appropriate Regional Director of the U.S. Fish and Wildlife Service and the State official(s) designated by the governor of the state concerned. Based upon this consultation, installations will be classified under one of the four following categories. (Note: All installations are currently classified. Category classification will be changed when installation program potential is determined (by consultation as above) to warrant such changes):

(1) Category I. Installations having land and water areas suitable for the conservation and management of fish, wildlife, and other natural resources.

(2) Category II. Installations for which a decision is pending as to program suitability within the meaning of paragraph (a)(1) of this section.

(3) Category III. Installations which are classified, due to lack of adequate land or water areas, as unsuitable for a program of conservation and management of fish and wildlife and other natural resources, such classification being determined after the consultation prescribed in paragraph (a) of this section.

(4) Category IV. Installations which obviously do not have land or water areas (e.g., recruiting centers, armories, cemeteries, hospitals, city office building headquarters, and the like) which would provide the program potential for the conservation and management of fish and wildlife and other natural resources within the meaning of this regulation.

(b) Reporting. (1) Category I installations will complete Part III of the report annually.

(2) Category II installations will complete applicable portions of Part III of the report annually.

(3) Installations classified in Category III or IV are excused from reporting unless or until the acquisition of additional land and water areas provides a program potential within the meaning of this regulation. Newly established installations classified in Category III or IV will be excused from further reporting after submission of their initial report which will consist of a signed statement attesting to their category designation.

PART 643—REAL ESTATE

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AUTHORITY. 10 U.S.C. 2667.

SOURCE: 43 FR 29748, July 10, 1978, unless otherwise noted.

Subpart A—General

§ 643.1 Purpose.

(a) This regulation sets forth the authority, policy, responsibility, and procedure for making military real estate, under the control of the Department of the Army, available for use by other military departments, Federal agencies, State and local governmental agencies, private organizations or individuals.

(b) This regulation implements Department of Defense Directives and

Instructions (4165 series), which include policies and procedures concerning use of military real estate.

§ 643.2 Applicability.

This regulation is applicable to Army military real estate, which includes land and improvements thereon and is also referred to as real property.

§ 643.3 Authority to grant use of real estate.

(a) The United States Constitution (Article IV, Section 3), provides that the Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.

(b) One of the principal authorities for the use of military real estate for commercial purposes is Title 10, United States Code, Section 2667, which authorizes the Secretary of the Army (SA), whenever it is considered to be advantageous to the United States, to lease such real or personal property under Army control, which is not for the time needed for public use, upon such terms and conditions as the SA considers will promote the national defense or be in the public interest.

(c) Grants under statutory authorities cited in this regulation of real property pertaining to river and harbor, water resource development and flood control projects, will be under the policies and general guidelines set forth in this regulation.

(d) The SA may, under the general administrative powers vested in the office, authorize the use of real estate in the absence of statutory authority, in unusual circumstances, provided the property is not for the time being required for public use, the grant conveys no interest in the real estate and the proposed use will be of a direct benefit to the United States. Under this authority, the right to use real estate may also be granted to other military departments or Federal agencies.

(e) Except as otherwise provided in this regulation, an interest in real estate will not be granted unless authorized by law.

(f) Other laws authorizing grants for non-Army use of real estate for various purposes and Table of Related Army Regulations are set forth in appendixes A and B, respectively.

§ 643.4 Responsibilities of the Chief of Engineers (COE).

(a) After it is determined that real estate located in the United States, Puerto Rico, American Virgin Islands and the Panama Canal Zone, is available for non-Army use, the COE, except as otherwise provided in this regulation, is charged with responsibility for arranging for the use of real estate within the scope of this regulation. In the performance of this function, the COE is authorized to obtain such technical assistance from the using service as may be deemed necessary.

(b) COE has staff responsibility over real estate matters in Guam, American Samoa, Trust Territory of the Pacific Islands (TTPI), and in foreign countries.

(c) Except as otherwise provided in this regulation, determinations that real estate is available for non-Army use must be approved by the COE.

(d) The authority of the COE to grant use of real estate will be delegated, to the extent feasible, to U.S. Army Division and District Engineers (DE).

(e) The COE is responsible for the granting of temporary use of real estate reported excess to the General Services Administration (GSA), to the extent authorized by regulations issued pursuant to the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471, et seq.), and as provided in Title 10, United States Code, Section 2667(f). The COE is also responsible for supervision and the issuance of instructions covering the granting of use of real estate within the scope of this regulation. Where Army or installation commanders are authorized to grant use of real estate, they are authorized to obtain technical assistance from the appropriate DE.

(f) In reviewing Army requirements for real estate (AR 405-10), the COE will consider the availability and adequacy of other military or federally-owned real estate to satisfy Army requirements before leasing privately-owned real estate, or renewing existing leases.

§ 643.5 Responsibilities of major commands (MACOMS) and special staff agencies.

Except as otherwise provided herein, determinations of availability will be approved by the COE or higher authority. MACOMS and special staff agencies are responsible for determining the real estate which can be made available for non-Army use, specifying the authorized uses of the property which will not be incompatible with military requirements for the property, the length of the term and any restrictions to be imposed on the grantee's use. Upon approval of the determination of availability, the real estate grant will be issued by the DE or as otherwise provided in this regulation.

§ 643.6 Responsibilities of overseas commanders.

Overseas commanders are charged with responsibility for the granting of use of real estate in overseas areas (Puerto Rico, Guam, the American Virgin Islands, American Samoa, TTPI, and the Canal Zone), and in foreign countries, for non-Army use under the policy and guidance expressed in this regulation, provided such use is consistent with the Status of Forces Agreements, Treaties, or the Agreements under which the Army controls such real estate

§ 643.7 Preparation of report of availability.

A report of availability will be prepared by the installation commander or head of the special staff agency, when it is determined that for the time being the real estate is not required for Army use and can be made available, either concurrently with the Army, or exclusively, for use by another military department, by other Federal agencies, by State or local governmental agencies, private organizations or individuals. The installation commander's recommendation will be made as far in advance as possible so as to minimize the time lapse between the determination of availability and the date of use of the property by the grantee. Where real estate suitable for agricultural or grazing purposes is involved, the normal season for planting and grazing should be taken into consideration so that the property may be advertised in a timely manner. A copy of each report will be furnished to the appropriate DE for information. The report of availability will contain the information outlined in Appendix C.

§ 643.8 Approval of report of availability.

The recommendation that real estate is determined available for non-Army use will be submitted by the installation commander to the major commander for approval, through the echelon of command. The major commander will approve such recommendation and submit it to the appropriate DE for action, except recommendations involving the following actions will be forwarded to the COE:

(a) A lease or license, including licenses to States for National Guard purposes, if the estimated annual rental value exceeds $50,000.

(b) A permit, license, or other grant of real estate, regardless of value, which results in a significant reduction or redirection of installation mission objectives;

(c) A lease of land where the proposed lease term is in excess of 25 years for banks and Federal credit unions and/or the building to be constructed exceeds DOD space criteria;

(d) Any permit, license, agreement, or other grant to another military department or to a Federal agency of large or significant real estate holdings for a period in excess of 5 years (including renewal options);

(e) A grant of an easement which involves the replacement or relocation of Army facilities at an estimated cost in excess of $100,000;

(f) A grant of an easement where the estimated annual fair market value of the easement exceeds $50,000.

(g) A grant which is controversial or unusual in nature and may embarrass the DA;

(h) A grant involving search for treasure trove;

(i) A grant for vehicle speed contests;

(j) A grant at an active industrial installation, excluding unimproved land areas.

NOTE: The Commander, U.S. Army Materiel Development & Readiness Command (DARCOM), is authorized to approve determinations of availability at standby industrial installations where the estimated annual rental value does not exceed $50,000.

§ 643.9 Approval of availability outside the United States.

Overseas commanders may authorize the use by another military department or a Federal agency of an installation or portion thereof located in designated overseas areas and in foreign countries when the real estate is not for the time needed for Army purposes or its concurrent use for other purposes will not interfere with the mission of the installation and such other use is not inconsistent with the agreement under which the property was acquired. Overseas commanders may also authorize any use of such property which is necessary in the accomplishment of the DA mission for which the property was acquired. All other proposed uses will be coordinated with the United States diplomatic mission in the country involved prior to submission to HQDA (DAEN-REM) WASH DC 20314, for approval. Where the overseas commander is authorized to approve such use, the commander or designee will prepare and execute the necessary grant.

§ 643.10 Reports to DOD and the congressional committees on Armed Services.

(a) The grants set forth in 1-8a. through f., with respect to real estate in the United States, Puerto Rico, American Virgin Islands, Guam, American Samoa, and the TTPI, require prior approval of the Assistant Secretary of Defense (I&L), and recommendations should contain information in justification thereof.

(b) The grants set forth in 1-8a., with respect to real estate in the United States and in designated overseas areas (excluding the Canal Zone), except leases for agricultural or grazing purposes, require a report to the Committees on Armed Services of the Senate and House of Representatives as provided in Title 10, United States Code, Section 2662.

§ 643.11 Rights of entry.

Pending the signing of the formal instrument, no right of entry will be granted unless authorized by the office wherein the instrument will be signed, except where contrary instructions have previously been issued by the DA. When authorized, rights of entry will be granted by the DE, or overseas commander, as appropriate.

§ 643.12 Preparation and signing of instruments.

Instuments granting temporary use of real estate will be prepared as provided in this regulation. Except where authority has been otherwise granted, the COE or designee will approve, execute, and distribute instruments to the extent authorized by the SA; otherwise they will be prepared and submitted for execution by direction of the appropriate Assistant Secretary of the Army.

§ 643.13 Military requirement for real estate under grant.

When a military requirement arises for real estate which is being used under a grant of non-Army use, the withdrawal of availability will be approved at the same level of command as that required for determining the property available for non-Army use. The office responsible for effecting temporary use of the property should be promptly notified of the withdrawal of availability for non-Army use and the latest date the property will be required for military purposes. Termination of the use will be in accordance with the provisions of the grant unless military necessity requires other action. In order to avoid possible claims for damages and in the interest of good community relations and in furtherance of the Army's leasing program, the grantee will be allowed, when practicable, a reasonable time after notice of revocation, to vacate the premises, remove his property and, if required, restore the premises. In controversial cases, or where a claim for damages or litigation is anticipated, HQDA (DAEN-REM) WASH DC

20314, will be notified of the circumstances prior to sending notification of termination of the grant to the grantee.

§ 643.14 Inspection to assure compliance with terms of outgrants.

Commanders will provide general surveillance over areas made available for non-Army use and will advise the DE if and when there are any irregularities. Real estate which is being used for non-military purposes will be inspected at least once each year by the COE, or by his representative, to determine whether grantees or occupants are complyng with the terms of the instruments authorizing use and occupancy, except with respect to easements and licenses for rights-of-way for roads, streets, powerlines, pipelines, underground communication lines and similar facilities. The COE will make compliance inspections for such easements and licenses at least once during each 5-year period. However, the DE will check with installation commanders annually to assure that there are no situations which might need correction prior to the inspection. The installation commander will make interim inspections of all real estate being used for non-military purposes as are necessary for timely observation of the extent of compliance with grant provisions designed to protect and preserve the real estate for military requirements, and will furnish the appropriate DE a copy of a written report of the inspection reflecting findings and recommendations. In order that the grantee's operations not be unreasonably disrupted, the annual compliance inspection made by the DE will be coordinated with the installation commander so that, if feasible, only one inspection will be made. Where necessary, corrective action in accordance with applicable regulations will be taken for the enforcement of the terms of the grant by the responsible officer who granted the use. Overseas commanders are responsible for inspection of real estate under their jurisdiction and necessary corrective action.

§ 643.15 Unauthorized use.

Whenever it is observed that real estate under the control of the DA is being used and/or occupied by private parties without proper authority, corrective action will be taken to cause such unauthorized use to be discontinued or to formalize such use and occupancy by an appropriate grant in accordance with this regulation. In either event, compensation will be obtained for the unauthorized use of such property.

Subpart B—Policy

§ 643.21 Policy—Surveillance.

Installation Commanders will maintain constant surveillance over real estate under their jurisdiction to determine whether any of it is excess to requirements, or may be made available for other Army use, or may be made available for use for other than Army purposes and will process such determinations expeditiously in accordance with the provisions of this regulation. From time to time DOD, DA and GSA surveys will be made pursuant to Executive Order 11954, 7 January 1977, which enunciated a uniform policy for the Executive Branch of the Federal Government with respect to the identification of excess and under-utilized real estate (AR 405-70). Real estate for which is retained for future use will be a requirement which will be disposed of in accordance with AR 405-90. Real estate which the Army does not currently need but which is retained for future use will be made available to others for use either exclusively or concurrently with the Army. When an installation is in an inactive status, the presumption is that it is available for other military or Federal use or for leasing unless there are cogent reasons that such action should not be taken. The purpose of this rule is to put to beneficial use Federal property, which is not for the time required for its basic use, for the benefit of other Federal agencies, the local economy, or for the benefits accruing to the United States from the income and/or savings of maintenance, protection, repair, or restoration.

§ 643.22 Policy—Public safety: Requirement for early identification of lands containing dangerous materials.

(a) DA will not make available to others any real estate which is contaminated with explosives or with toxic materials or other innately or potentially harmful elements until such elements have been removed or have been rendered harmless, unless the proposed user of the area is aware of the condition of the area and is technically qualified and certified to make use of the area in its contaminated state.

(b) It is imperative that commanders keep records on and have a continuing awareness of the state of contamination of lands by explosives, military chemical or other dangerous materials.

(c) Procedures with respect to action to neutralize or decontaminate the area are set forth in AR 405-90.

§ 643.23 Policy—Preference.

Army real estate under the control of DA which is made available for use for other than Army purposes will be made available for use by other military departments or DOD activities and agencies, other Federal departments, activities or agencies, State or local governmental bodies and other private parties, in that order.

§ 643.24 Policy—Competition.

The use of real estate under the control of DA for private purposes will be granted only after reasonable efforts have been made to obtain competition for its use, through advertising. Advertising is any method of public announcement intended to aid directly or indirectly in obtaining offers on a competitive basis. Advertising may be accomplished by circulating and posting notices and by paid advertising in newspapers and trade journals. The purpose of seeking competition is to afford all qualified persons equal opportunity to bid for the use of the property, to secure for the Government the benefits which flow from competition, and to prevent criticism that favoritism has been shown by officers or employees of the Government in making public property available for private use. Although the lease of Government real estate to civilians employed by the military departments or officers or enlisted personnel of the Armed Forces is not prohibited by law, it is essential that extreme care be exercised to avoid favoritism or the appearance of favoritism. Generally leases to Federal Government personnel will be granted only after competitive bid under the sealed bid method. The provisions of this paragraph do not affect the authority contained in AR 210-10 and 210-50 for furnishing quarters to civilian employees of DA. Also the provisions of this paragraph do not affect the use of Federal facilities by uniformed personnel as may be otherwise provided for. Other exceptions to the advertising policy are as follows:

(a) Granting easements, leases and licenses to public agencies and public utilities.

(b) Granting permits to other Federal agencies.

(c) Leasing cable pairs.

(d) Leases or licenses to utility companies having an exclusive franchise in the area, for space on Government-owned poles for attaching their electric transmission communication lines.

(e) COE is authorized to grant a waiver of competition upon a determination that it will promote the national defense or will be in the public interest or upon a determination that competition is impracticable.

§ 643.25 Policy—Grants which may embarrass the Department of the Army.

The use of property under DA control will not be authorized for any purpose when the proposed use or the revocation thereof might prove embarrassing to the DA.

§ 643.26 Policy—Commercial advertising on reservations.

DA will not authorize the posting of notices or erection of billboards or signs for commercial purposes on property under its control.

§ 643.27 Policy—Environmental considerations.

DA will not authorize the use of real estate, water and other natural resources when such use is not in harmony with the goals and intent of the following legislation and/or similar legislation which establishes a firm Federal policy and provides procedures to enhance the overall environmental quality.

(a) National Environmental Policy Act of 1969 (NEPA), (42 U.S.C. 4321), (AR 200-1, Chapters 1 and 2).

(b) National Historic Preservation Act of 1966 (Pub. L. 89-665, 16 U.S.C. 470-47M, 1970), as amended by 16 U.S.C. 470h, 470i, 470*l*-470n, Supp. 1973).

(c) Federal Water Pollution control Act of 1972, as amended.

(d) Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(e) Coastal Zone Management Act of 1972 (16 U.S.C. 1451).

(f) Clean Air Act of 1970, as amended, (42 U.S.C. 1857), (AR 200-1, Chapter 4).

(g) Marine Protection, Research and Sanctuaries Act of 1972 (16 U.S.C. 1431), (AR 200-1, Chapter 3).

(h) Solid Waste Disposal Act, as amended (42 U.S.C. 3251), (AR 200-1, Chapter 6).

(i) Federal Insecticide, Fungicide and Rodenticide Act, as amended by the Federal Environmental Pesticide Control Act of 1972 (7 U.S.C. 136), (AR 200-1, Chapter 6).

(j) Noise Control Act of 1972 (42 U.S.C. 4901), (AR 200-1, Chapter 7).

§ 643.28 Policy—Historic and cultural environment.

(a) Executive Order No. 11593, 36 FEDERAL REGISTER 8921 (Appendix D) provides in part that the Federal Government shall provide leadership in preserving, restoring and maintaining the historic and cultural environment of the Nation; that Federal agencies shall:

(1) Administer the cultural properties under their control in a spirit of stewardship and trusteeship for future generations;

(2) Initiate measures necessary to direct their policies, plans and programs in such a way that federally owned sites, structures and objects of historical, architectural, or archeological significance are preserved, restored and maintained for the inspection and benefit of the people; and

(3) In consultation with the Advisory Council on Historic Preservation (16 U.S.C. 470i) institute procedures to assure that Federal plans and programs contribute to the preservation and enhancement of non-federally owned sites, structures and objects of historical, architectural, or archeological significance (AR 200-1, Chapter 8 and App. A).

(b) Outgrants will include conditions to assure protection of real estate as contemplated in paragraph (a) of this section.

§ 643.29 Policy—Archeological surveys.

The SA under the authority of 16, 432, may allow the examination of ruins, the excavation of archeological sites, and the gathering of objects of antiquity upon Army lands by institutions which are deemed properly qualified to conduct such examinations, excavations, and gatherings (AR 200-1, Chapter 8).

§ 643.30 Policy—Construction projects and activities; protection of historical and archeological data.

The Archeological and Historical Preservation Act of 1974 (16 U.S.C. 469 et seq.) provides for the preservation of historical and archeological data on all Federal or Federally-assisted construction projects or in connection with any federally licensed activities or programs.

§ 643.31 Policy—Flood hazards.

Each Determination of Availability Report will include an evaluation of the flood hazards, if any, relative to the property involved in the proposed outgrant action, pursuant to the provisions of Executive Order 11296, August 10, 1966. DA will not authorize the use of lands in flood plains for habitation purposes or any other use which may be uneconomical, hazardous, or unnecessary.

§ 643.32 Policy—Endangered species.

The Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), declares the intention of Congress to conserve threatened and endangered species of fish, wildlife and plants, and the ecosystems on which those species depend. The Act provides that Federal agencies must utilize their authorities in furtherance of its purposes by carrying out programs for the conservation of endangered or threatened species, and by taking such necessary action to insure that any action authorized by that agency will not jeopardize the continued existence of such endangered or threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretaries of the Departments of Commerce or Interior, as appropriate, to be critical.

§ 643.33 Policy—Coastal zone management.

(a) The Coastal Zone Management Act of 1972 (16 U.S.C. 1456), directs all Federal agencies conducting or supporting activities directly affecting the coastal zone of a state, to conduct or support those activities in a manner which is, to the maximum extent practicable, consistent with approved state management programs. The opinion of the Attorney General of the United States is that Federal lands are excluded from mandatory compliance with the state's coastal zone management program, regardless of the type of Federal jurisdiction exercised thereover. However, it is Army policy that its activities will comply, to the extent practicable, with a state's approved coastal zone management program.

(b) Applications for grants for use of real estate affecting land or water uses in the coastal zone of a state will include a certification that the proposed activity complies with the state's approved program and that applicant's activity will be conducted in a manner consistent with the law.

(c) An activity affecting land or water uses in the coastal zone of a state which will not be conducted in a manner consistent with an approved state program will be exempted from this certification requirement only if the Secretary of Commerce, on his own initiative or upon appeal of the applicant, determines that the activity is consistent with the objectives of the Coastal Zone Management Act or is otherwise necessary in the interest of national security.

§ 643.34 Policy—Public utilities on installations.

(a) Contracting officers, with the approval of Installation Commanders, are authorized to permit the extension of public utilities upon installations, as part of the contract for furnishing to the Government electricity, water, and gas, where such extension is necessary solely to serve the installation and not in part to serve private consumers outside the installation. The above authorization is covered by the provisions of the contract for purchase of utilities services contained in Armed Services Procurement Regulations.

(b) Contracts or agreements for the sale of surplus utilities services as authorized by law or regulations will include similar authority for the purchaser to install and maintain such facilities on the installation as necessary in connection with the sale of such utilities services, in accordance with AR 420-41 and AR 105-23.

§ 643.35 Policy—Mineral leasing on lands controlled by the Department of the Army.

(a) *Acquired lands*—(1) *General.* The Coal Leasing Amendments Act of 1975, hereinafter referred to as the act, amended the Mineral Leasing Act for Acquired Lands (30 U.S.C. 352) and permits the Secretary of Interior (SI), with the consent of the Secretary of Defense, to lease deposits of coal, phosphate, oil, oil shale, gas, sodium, potassium and sulfur which are within acquired lands of the United States which have been set aside for military or naval purposes. The consent requirement is to insure the adequate utilization of the lands for the primary purposes for which they have been acquired or are being administered. Leasing is subject to the same conditions as contained in the leasing provisions of the mineral leasing laws (see 30 U.S.C. 351). Authority in this paragraph does not permit leasing of mineral deposits lying in tidelands, submerged lands, nor in certain coastal waters.

(2) Notwithstanding the generality of the foregoing, leasing of coal and lignite deposits is subject to special restrictions. The act permits such leas-

ing, provided the Secretary of Defense concurs, only to a governmental entity (including any corporation primarily acting as an agency or instrumentality of a State) which provides electrical energy for sale to the public if such governmental entity is located in the State in which such lands are located.

(b) *Public domain lands.* Deposits of coal, phosphate, sodium, potassium, oil, oil shale, native asphalt, solid and semi-solid bitumen, bituminous rock and gas located on public domain lands under the jurisdiction of the Department of the Army may be leased by the SI pursuant to 30 U.S.C. 181 et seq. with the concurrence of the Secretary of the Army.

§ 643.36 Policy—Interim leasing of excess properties to facilitate economic readjustment.

Interim outleasing of excess real property is authorized to lessen the economic impact on the local community, caused by an installation inactivation, closure or realignment. These outleases may be granted to State or local governmental bodies in consideration for care, custody, management and routine maintenance. Income derived from the use of the property in excess of the cost of care, custody, management and routine maintenance will be covered into the Treasury as miscellaneous receipts. The outleasing will generally conform to an economic recovery plan outlined by the Office of Economic Adjustment, OASD (I&L), will require coordination with the DASD (I&H) and concurrence by the GSA. Leases are limited to one year and must be revocable by the Government on 30 days notice.

§ 643.37 Policy—Requests to search for treasure trove.

Section 3755 of the Revised Statutes (40 U.S.C. 310) authorizes the Administrator of the GSA to make such contracts and provisions as he deems necessary to protect the interests of the Government in searches for and sales of treasure trove. All searches and sales authorized by GSA under this statute are subject to the Act for the Preservation of American Antiquities (16 U.S.C. 432) and will only be permitted after consent of the Department of the Army has been obtained.

§ 643.38 Policy—Utility rates.

(a) Rates for utilities furnished by the Army will be in accordance with AR 420-41.

(b) Payments for utilities or services furnished will be deposited to the Treasurer of the United States to the credit of the appropriation from which the costs of furnishing them was paid. Collection for utilities and services furnished by the Army is the responsibility of the officer having immediate jurisdiction over the property in accordance with AR 37-19 and AR 37-27.

§ 643.39 Policy—American National Red Cross.

(a) Title 10 U.S.C. 2670, authorizes the SA to grant revocable licenses permitting the erection and maintenance by the American National Red Cross on military reservations, of buildings suitable for the storage of supplies for the aid of the civilian population in case of serious national disaster, or the occupation for that purpose of buildings erected by the United States.

(b) Installation Commanders will furnish office space and quarters for Red Cross activities and personnel when assigned to duty with the Armed Forces in accordance with AR 930-5.

§ 643.40 Policy—Young Men's Christian Association (YMCA).

Title 10 U.S.C. 4778, authorizes the SA to grant revocable licenses pemitting the erection and maintenance by the YMCA on military reservations, of such buildings as their work for the promotion of the social, physical, intellectual, and moral welfare of the garrisons may require.

§ 643.41 Policy—National Guard use.

Pursuant to the authority contained in 32 U.S.C. 503, the SA is authorized to grant revocable licenses to the States and territories for the use and occupancy of installations or portions thereof by the National Guard. A license may not be granted for the erection of a permanent National Guard

Armory without specific congressional authority.

§ 643.42 Policy—Consents for crossing of rights-of-ways and similar interests owned by the United States.

Under the various easement authorities or under the administrative power in cases outside the purview of those authorities, the SA may consent to the granting of an easement by the owner of the servient estate, subject to such conditions as may be required to protect the Government's interest.

Subpart C—Leases

§ 643.51 Additional items concerning leasing.

In addition to the general and policy matters covered in Chapters I and II of Title 32, the following also apply with respect to the leasing of Army real estate.

§ 643.52 Term.

Each lease will be for a period not exceeding five years unless the SA determines that a longer period will promote the national defense or will be in the public interest.

§ 643.53 Consideration.

(a) Unless otherwise authorized by this regulation or directed by the SA, the consideration for a lease of real estate will be the appraised fair market rental value. However, the value of the maintenance, protection, repair, or restoration by the lessee of the property leased, or of the entire unit or installation where a substantial part of it is leased, may be accepted as all or part of the consideration. The value of the maintenance, protection, repair or restoration, when added to the amount of the monetary payment to be made by the lessee, must equal the appraised fair market rental value of the property leased.

(b) Buildings and space may be leased to a State or political subdivision thereof for public school purposes, limited to use for classrooms and closely related academic instructions, through high school level, at no monetary consideration. Where bare land is leased for construction of a school through high school level, the acreage will not exceed criteria established by the appropriate State authority or the Department of Health, Education, and Welfare (HEW), the rental will be $1 for the term of the lease and any renewal thereof. Leases of bare land will be for a term of 25 years, with an option on tenant's part to renew for another term of 25 years. Real estate may also be leased for educational purposes to public educational institutions at a reduced rental, after consultation with the HEW, and taking into account any benefits accruing to the United States through the use of such property. In any event, the lessee will be required to assume the cost of maintenance, protection, repair, or restoration of the property leased and the administrative costs incident thereto.

(c) Lease granted for agricultural, grazing, or haying purposes will have attached thereto the land-use regulations furnished by the installation commander specifying the items required to be performed by the lessee as part of the lease obligations. It is the policy of the DA that land leased for agricultural, grazing or haying purposes be returned to the Government in as good or better condition than when initially leased. The land-use regulations will include those activities of maintenance, protection, repair, or restoration of the property leased which the lessee will be required to perform as part or all of the consideration for the lease. Generally, an activity will qualify as an offset from rental if it is:

(1) Performed on the leased premises, or when it constitutes a substantial part of the entire rental unit or installation, (2) of direct benefit to the installation in its authorized current or mobilization mission, as distinguished from desired programs, or in furtherance of the Army's leasing program, (3) generally related to the lessee's use of the leased property. Where all of the above criteria are met, the following activities may be authorized: Control of erosion, conservation of natural resources, and maintenance of the viability of the land for continuing leasing, such as mowing, weed control, seeding, fertilizing,

mulching, crop rotation, selected cutting, and soil conservation measures such as terraces, check dams, wells, springs, ponds, title, or open channels or culverts for drainage, firebreaks, inside fencing and cattle guards. Maintenance, protection, repair or restoration of buildings, roads, perimeter fencing, and similar improvements are not authorized as offsets from rental unless the property is leased to and beneficially used by the lessee, or on a rental unit or installation in which the leased premises constitutes a substantial part or as otherwise approved by HQDA (DAEN-REM), Washington, D.C. 20314. Also, lessee may be required to perform activities in support of recreation and welfare, fish and wildlife, beautification, and esthetic programs and the cost of establishing and maintaining recreation, swimming and fishing areas, wildlife habitats, food plots, and similar activities when the following conditions have been met:

(1) The activities to be offset are in furtherance of the installation natural resources plan as approved by the MACOM.

(2) The overall plan for the term of the lease, has been approved by ASA (IL & FM).

(3) MACOM approval has been obtained for each lease when any activity to be offset exceeds $1,000.

Total of the offsets in any year will never exceed the annual rental.

§ 643.54 Receipts.

Receipts will be deposited into the Treasury as miscellaneous receipts.

§ 643.55 Mandatory revocation clause in lease.

Each lease will contain a provision permitting the SA to revoke the lease at any time, unless it is determined that the omission of such provision from the lease will promote the national defense or will be in the public interest. In any event, the lease will be revocable by the SA during a national emergency.

§ 643.56 Taxation of lessee's interest.

The lessee's interest in leased property may be taxed by State or local governments as provided in 10 U.S.C. 2667(e). Each lease will contain a provision that if and to the extent that the property owned by the Government and included in the lease, as opposed to the leasehold interest of the lessee therein, is later made taxable by State or local governments under an act of Congress, the lease will be renegotiated.

§ 643.57 Sublease or assignment.

A lease of real estate will not be subleased or assigned for direct or indirect use by another Federal agency. Except as specifically provided in the lease, a sublease or assignment of the lease will not be authorized without prior approval of HQDA (DAEN-REM), Washington, D.C. 20314.

Subpart D—Licenses

§ 643.71 Additional items concerning licenses.

In addition to the general and policy matters covered in Subparts A and B, the following also apply with respect to the granting of licenses.

§ 643.72 License.

A license is a bare authority to do a specified act upon the property of the licensor without acquiring any estate therein. The principal effect of a license is to authorize an act which in the absence of the licensee would constitute a trespass.

§ 643.73 Term.

The term of a license will be limited to a period reasonably necessary to accomplish the purpose for which the license is being granted, but in no event will the term exceed five years, without the approval of COE.

§ 643.74 Consideration.

When a license is granted under the authority of an easement or leasing statute, the same rules will apply in regard to consideration as is applicable to the granting of an easement or lease under the statute. Since the administrative power may be relied upon for the grant of a license only when such grant is of direct benefit to the

Government, such grants may be made without consideration.

Subpart E—Easements

§ 643.81 Additional items concerning easements.

In addition to the general and policy matters covered in Subparts A and B, the following also apply with respect to the granting of easements.

§ 643.82 Term.

The term for which an easement is granted will be guided by the type of easement, the period for which the land can be made available and the limitations of the authorizing statute.

§ 643.83 Consideration.

Although the statutes authorizing grants of rights of way or easements do not make it mandatory that compensation be paid to the United States, such grants will reserve consideration in an amount equal to the fair market value as established by recognized appraisal practices. As an exception to this rule, grants to States, counties, municipalities, or political subdivisions thereof, will not require fair market value when the purpose of the easement is to serve the public interest or is to benefit the Federal Government.

§ 643.84 Easement—Grantees relocate or replace needed facilities.

In easement grants, grantees usually will be required to repair and restore damage done to Government land and improvements and to relocate or replace buildings and other needed facilities rendered useless or less useful by the exercise of the easement rights granted. DOD policy requires that in keeping the Army whole, the relocation or replacement of facilities will be limited to those for which there is a continuing requirement. By specific exclusion, establishment of a different category of facility is not authorized. (DODI 4165.12 III C)

§ 643.85 Easement grantees—Payment for removal or destruction of unneeded improvements.

Where a proposed right-of-way will require removal or destruction of improvements which are not required to be relocated or replaced to meet military needs, such improvements will be disposed of as excess property in accordance with AR 405-90, and a condition of the easement grant will be payment for such improvements as follows:

(a) Where the easement grant is to be made at fair market value to entities not entitled to grants of rights of way without charge, the charge for the grant will include the in-place fair market value of the improvements.

(b) Where the proposed grantee is a State or local Government agency normally granted a right of way without charge under Army policy and the grantee's project is subsidized wholly by an agency of the Federal Government, no charge will be made for the improvements thus lost, since any charge made would not reflect a net return to the Government.

(c) Where the proposed grantee is a State or local Government agency normally granted a right of way without charge under Army policy, and the grantee's project is not subsidized, or is subsidized only in part, the charge for such improvements removed or destroyed and not replaced will be the salvage value thereof.

§ 643.86 Easements for various purposes with relinquishment of legislative jurisdiction.

Title 40 U.S.C. 319, and delegation of authority thereunder from the Secretary of Defense authorizes the SA to grant easements and concurrently to relinquish to the State in which the affected land is located such legislative jurisdiction as is deemed necessary or desirable. Ordinarily, 40 U.S.C. 319 will not be used for easement grants which may be accomplished pursuant to authorities set forth in preceding paragraphs except where retrocession of legislative jurisdiction is intended.

Subpart F—Permits

§ 643.101 Additional items concerning permits.

In addition to the general and policy matters covered in Subparts A and B, the following also apply with respect to the granting of permits.

§ 643.102 Permit.

A permit is the temporary authority conferred on a Government agency to use real property under the jurisdiction of another Government agency.

§ 643.103 Term.

A permit may be granted to another military department, a DOD component, or Federal agency for a mutually agreeable period. if the permit is on a permanent or irrevocable basis, it is considered tantamount to a transfer and must be granted under special statutory authority. Where the real property involved is estimated to exceed $50,000 in value, a report must be made to the Congressional Committees on Armed Services, pursuant to Title 10 U.S.C. 2662.

§ 643.104 Consideration.

(a) Permits are usually granted on a rent-free basis.

(b) The Army is authorized, however, to charge for space and space-related services provided non-DOD Federal agencies. Charges will be at rates established by GSA for the particular location pursuant to 40 U.S.C. 490 (j) and (k). Exceptions to this policy will be real property and related services provided to an organization which is solely in the support of the installation's mission. (For example: Space assigned to a FAA air controller on an Army airfield; GAO activity auditing installation programs.) Proceeds which are in excess of the actual operating and maintenance costs of providing the service shall be credited to miscellaneous receipts unless otherwise authorized by law. Reimbursement for utilities and services furnished to the permittee is the responsibility of the officer having immeditate jurisdiction over the real estate. Where the use of real estate by a Federal agency under permit is authorized and the correspondence does not include information regarding charges to be made for the real estate, clarifying information will be obtained from HQDA (DAEN-REM), Washington, D.C. 20314.

(c) Where real property is leased to or otherwise used by the Army and a rental or charge is paid therefor, any use of the real estate, for non-Army use, either under permit or other grant, will provide for reimbursement of a proportionate part of the rental or charge, unless otherwise approved by OCE. Reimbursement is the responsibility of the DE. Any other officer authorizing such use is responsible for notifying the DE of the non-Army use.

Subpart G—Additional Authority of Commanders

§ 643.111 Additional authority.

In addition to authorities and responsibilities set forth above, the following grants may be made by commanders as indicated.

§ 643.112 Army exchange activities.

Use of space and structures by the Army Exchange and its concessionaires is governed by AR 60-10.

§ 643.113 Banks.

(a) The establishment of banks, branch banks, and banking facilities on Army installations is governed by AR 210-135.

(b) The Treasury Department determines whether a banking facility is self-sustaining and notifies the Commander, U.S. Army Finance and Accounting Center.

(c) Banking facilities which are not self-sustaining will be furnished space, utilities and custodial services without charge by the Installation Commander, provided space and services are available from existing resources.

(d) Banking facilities which are self-sustaining will be granted a lease by the DE, at fair market value, and reimbursement will be required for utilities and services furnished.

(e) A bank building may not be constructed on an Army installation without the prior approval of COE, SA, and DOD.

§ 643.114 Civil disturbances.

Without reference to higher authority, and when it is found to be in the public interest, MACOM and heads of agencies having command responsibility may grant, without consideration, revocable licenses for joint use of active Army and USAR facilities during civil disturbance for not more than 30 days to the National Guard and to municipal, county, and State officials and law enforcement agencies. Licensees must agree that the privileges granted will be without expense to the DA, that the use will be subject to the control of the officer having jurisdiction over the property, that it will remove its property from the premises when the license is terminated, that it will pay the cost of any services furnished to it by the DA, and, if a non-Federal agency, that it will hold the Government harmless from any damages or claims arising out of the use. Where it is proposed to allow such use beyond 30 days, the proposal must be submitted to HQDA (DAEN-REZ) Washington, D.C. 20314, for approval. Federal task force commanders, acting under instructions from the Chief of Staff, in a civil disturbance control operation may approve requests for the use of installations under their control (ref. AR 500-50).

§ 643.115 Contractors—Permission to erect structures.

Installation commanders are authorized to permit the erection of temporary structures for use solely in connection with a Government contract for construction and related work for the period of the contract and with provision for removal and restoration of the premises upon expiration of the contract; *Provided*, That, in the interest of the United States, any structure suitable for military use may, in lieu of removal, be relinquished to and become the property of the United States. If the structure is to be used for any purpose other than the fulfillment of the contract, application will be made to the DE for such use in order that a proper real estate instrument may be processed.

§ 643.116 Credit unions.

The establishment of credit unions on Army installations is governed by AR 210-24. Installation commanders are authorized to allot space in existing buildings, without charge for rent or services, to any credit union organized under State law or to any Federal credit union organized in accordance with the Federal Credit Union Act, (12 U.S.C. 1770), provided that, in either case, that 95 percent of the membership is composed of Federal employees, including former Federal employees who acquire membership while employed by the Federal Government and retained such membership.

§ 643.117 Hunting, trapping, and fishing.

Applications to hunt, trap, and fish on military reservations are governed by AR 420-74.

§ 643.118 Nonappropriated funds—Authority to permit erection of structures.

The authority of installation commanders to permit structures to be erected on military installations with nonappropriated funds, as well as the title status of each, is defined in AR 60-10 and AR 210-55. Use of existing space and structures for activities of a civilian nonappropriated fund is governed by AR 230-81.

§ 643.119 Licenses incidental to post administration.

Installation commanders may authorize the use of property incidental to post administration which in the absence of such authority would amount to a trespass, such as licenses to merchants to enter the reservation to make deliveries. The authority noted herein may not be used to grant licenses in situations otherwise covered by this regulation.

§ 643.120 Post offices.

Title 10 U.S.C. 4779b, provides that the SA shall assign suitable space for post office purposes at military posts where post offices have been established. Space assignment will be accomplished by arrangement between the postmaster and installation commander.

§ 643.121 Private organizations on DA installations.

(a) AR 210-1 defines and classifies private organizations, such as thrift shops and child-care centers, located on Army installations and provides policy guidance for their authorization and operation. Installation commanders may authorize the use of available facilities or space to such private organizations, without monetary consideration, when the use is on a nonexclusive basis and subject to immediate termination when possession is required by the installation commander for another purpose.

(b) Where the private organization desires exclusive use of facilities or space, or for a specified period of time, the matter will be considered a leasing action, the lease will be granted by the DE and will provide for payment of a rental consideration. The installation commander will consult with the DE if there is a question whether a proposed use of facilities or space by a private organization should be authorized by the DE under lease or by the installation commander by the issuance of a license.

§ 643.122 Reserve facilities—Air Force and Navy use.

MACOM may approve local agreements with other Army, DOD, and Reserve elements covering temporary use of existing Army Reserve facilities, *Provided, however,* That the DA is reimbursed in proportionate share for the services furnished and that the cost of any alterations that may be desired will be borne by the military service concerned. Although no specific form is prescribed for those operational agreements, the agreements constitute interservice support agreements subject to joint AR 1-35/SECNAV INST 4000.20B/AFR 400.27. Nothing in such joint regulation disallows use of DE outgrants to supplement coverages of interservice support agreements when requested and approved in accordance with this regulation. The terms used in the interservice agreements and/or DE outgrants will be those acceptable to the commands concerned. Agreements, however, which provide for the exclusive use of such property by the Air Force or Navy Reserve, or which involve a transfer of funds between services for other than minor utility services, or which involve an increase in personnel strength, or other complications, will be routed to the appropriate DE for execution of a formal permit.

§ 643.123 Reserve facilities—Local civic organizations.

In order to promote community relations in areas where Army Reserve Centers have been constructed, local civic and similar nonprofit organizations may be permitted to use the armory facilities during such periods that will not cause any interference with the primary use thereof for the administration and training of the Reserve components of the Armed Services of the United States. Procedures and policy are outlined in AR 140-488.

§ 643.124 Rights-of-way for ferries and livestock.

Installation commanders are authorized to grant permits for the landing of ferries and driving of livestock over military reservations under authority of 10 U.S.C. 4777.

§ 643.125 Trailer sites.

(a) Installation commanders are authorized to grant revocable leases to military personnel and civilian personnel qualified to occupy public quarters for use and occupancy of individual trailer sites within approved trailer camp areas, and to revoke or renew such leases. (See AR 210-50.) Leases will be granted pursuant to 10 U.S.C. 2667. Necessary utilities will be provided on a reimbursable basis. In no event will the terms of the lease exceed a period of 2 years. DA Form 373 (Lease or Trailer Sites) will be used exclusively for this purpose.

(b) Leases may be revoked for nonpayment of rent, or breach of any condition of the lease or military necessity.

(c) Rents will be collected locally and turned over to the nearest Army Finance and Accounting Officer for deposit in accordance with procedure set forth in AR 37-103. A copy of the Cash Collection Voucher (DD Form

1131) will be forwarded to the appropriate DE.

§ 643.126 Transportation licenses.

Installation commanders are authorized to grant revocable licenses and to revoke such licenses in the name of an by authority of the SA, for bus and taxicab service on installations. The following policy will be observed in granting such licenses; however, if real estate is required to be leased in accordance with paragraph (e) of this section, no commitment will be made to grant licenses until approval is received for the lease.

(a) One or more licenses (revocable at will and for a period not to exceed 5 years) may be granted, based upon the free competitive proposals of all available companies or individuals.

(b) DD Form 694 (Transportation License Military Reservation) will be used for this purpose.

(c) Only duly licensed operators will be permitted to operate on installations.

(d) No distinction will be drawn between taxicab and bus transportation.

(e) If use of Government property is desired for such purposes as at bus station, waiting rooms, storage space, offices in connection with the proposed transportation service, application for a lease will be forwarded to the appropriate DE for processing.

(f) Licenses may be revoked by the installation commander for breach of any condition of the license and for military necessity.

(g) The installation commander will furnish a copy of each such license, through channels, to the MACOM or to the head of the agency having command responsibility.

§ 643.127 Quarters.

The assignment and rental of quarters to civilian employees and other nonmilitary personnel will be accomplished in accordance with AR 210-50. Responsibility of the Corps of Engineers for the establishment of rental rates for quarters rented to civilian and military personnel is set forth in AR 210-12.

§ 643.128 Veterans' conventions.

Without reference to higher authority, MACOM may lend certain Army real property (including the use of unoccupied barracks) to national veterans' organizations for use at State or national conventions or for national youth, athletic, or recreational tournaments sponsored by those organizations in accordance with AR 725-1.

§ 643.129 Youth groups.

(a) Installation commanders may grant revocable-at-will licenses for one-time use, or for intermittent or continuing use of available meeting room facilities, without monetary consideration, to on-post youth groups such as the Boy Scouts, Girl Scouts, and Little League.

(b) Installation commanders may grant revocable-at-will licenses for one-time use, or for intermittent or continuing use, to off-post youth groups such as the Boy Scouts, Girl Scouts, and the Little League for nonexclusive use of recreational areas or unimproved land areas within military reservations for recreational or camping purposes. Licenses will be granted for up to a period of 1 year without monetary consideration and will provide for a hold-harmless clause with respect to any and all claims against the Government and will require the repair of any damage or destruction resulting from such use.

§ 643.130 Joint Carrier Military Traffic Offices (JAMTO, JBMTO, JRMTO, SAMTO).

Installation commanders will furnish office space without charge for JCMTO offices established in accordance with AR 55-355.

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AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 3012, unless otherwise noted.

SOURCE: 44 FR 3168, Jan. 15, 1979, unless otherwise noted.

Subpart A—Project Planning

§ 644.1 Preface.

Subpart A sets out basic procedures to be followed in planning and scheduling for the acquisition of lands in connection with Military and Civil Works projects. It is not intended to be taken as absolute, without modification, but more as a guide to insure all aspects involved and potential problems are fully considered in planning for the acquisition of additional lands. Proper planning in the initial stages of any project can and should eliminate unnecessary delays during the acquisition phase.

CIVIL WORKS

§ 644.2 General.

(a) *Purpose.* Sections 644.2 through 644.8 describe the authorities and procedures of the Corps of Engineers relating to real estate planning and project authorization for the acquisition of land and interests therein for all water resource projects.

(b) *Applicability.* These sections are applicable to all Division and District Engineers having civil works real estate responsibilities.

(c) *River and Harbor and Flood Control Projects*—(1) *River and Harbor Projects.* The Act of Congress approved April 24, 1888 (33 U.S.C. 591) authorizes acquisition of land for river and harbor purposes. These include the construction, operation, maintenance and improvement of both natural and artificial waterways, the construction of locks and dams, dikes, bulkheads, jetties, revetment and other bank protection works, and spoil disposal dikes and retaining structures for construction and maintenance. Unless otherwise specified by Congress, local interests furnish, free of cost to the United States, all lands, easements and rights-of-way required for initial construction, operation and subsequent maintenance. A cash contribution may also be required if enhancement of land values results from disposal of spoil dredged from project areas (ER 1150-2-301 and EM 1120-2-101).

(2) *Flood Control Projects.* The Act of Congress approved March 1, 1917 (33 U.S.C. 701) authorizes acquisition of land for flood control purposes, and section 2 of the Act of Congress approved June 28, 1938, as amended (33 U.S.C. 701c-1), authorizes the acquisition of land and interests therein for dam and reservoir projects, channel improvements, and rectification projects for flood control at Federal expense. Dam, reservoir and lake projects are generally constructed entirely at the expense of the United States and are maintained and operated with the use of Federal funds. Local interests are not required to furnish lands, easements and rights-of-way for dam and reservoir projects, unless specifically authorized by law for small reservoirs which provide localized flood protection (EM 1120-2-101). For local flood protection projects, except channel improvement or channel rectification projects authorized by the Flood Control Acts of 1936, 1937 and 1938, local interests must provide, without cost to the United States, all necessary lands, easements, and rights-of-way. They must also hold and save the United States free from damages due to the construction, operation and maintenance of the project, except where such damages are due to the fault or negligence of the United States or its contractors, and maintain and operate all the works after completion, in accordance with regulations prescribed by the Secretary of the Army. Channel improvement and channel rectification projects authorized by the Acts of 1936, 1937 and 1938 are built entirely at Federal expense and no local cooperation is required. Exceptions to these rules are provided by law in the case of certain specific projects such as hurricane protection, shore protection, beach erosion control or other purposes. As in river and harbor projects, a cash contribution may also be required if enhancement of land values results from disposal of spoil dredged from project areas (ER 1150-2-301 and EM 1120-2-101).

(d) *The Navigational Servitude.* As a general rule the United States does not acquire interests in real estate which it already possesses or over which jurisdiction is or can be legally exercised. Irrespective of the ownership of the banks and bed of a stream below ordinary high water mark, and irrespective of western water rights under the prior appropriation doctrine, no further Federal interest is required for navigation projects in navigable streams below the ordinary high water limit. It is required, therefore, that the acquisition plan consider the extent of the navigational servitude.

(1) ER 1165-2-302 contains the practice and procedures regarding navigation.

(2) The navigational servitude affects abutting uplands, in that the special site value attributable to their location near a navigable stream is noncompensable. However, this has been partially changed by section 111 of Pub. L. 91-611. In all cases where real property is acquired by the United States for public use in connection with any improvements of rivers, harbors, canals or waterways of the United States, the compensation to be paid shall be the fair market value of such real property based upon all uses to which such real property may reasonably be put, including its highest and best use, any of which uses may be dependent upon access to or utilization of such navigable waters. In cases of partial acquisitions of real property, no depreciation in the value of any remaining real property shall be recognized, and no compensation shall be paid for any severance to the remaining real property which results from loss of or reduction of access from the remaining real property to the navigable waters because of the acquisition of real property or the purposes for which the real property is acquired.

(3) Injury to private property within or abutting non-navigable streams is compensable if inflicted in the course of an exercise of the navigation power limited to the navigable mainstream. *U.S.* v. *Kansas City Life Ins. Co.*, 339 U.S. 799 (1950), *U.S.* v *Cress*, 243 U.S. 316 (1917).

(e) *Buildings.* Buildings for human occupancy, as well as other structures which would interfere with the operation of the project, or which would be substantially damaged by inundation, are prohibited below the guide acquisition line unless otherwise specifically approved by the Chief of Engineers.

(f) *Estates.* Standard estates for acquisition of land or interests therein are contained in Subpart C. Non-standard estates should be submitted to HQDA (DAEN-REA-P) WASH DC 20314 for approval.

§ 644.3 Navigation Projects.

(a) *Land to be Acquired in Fee.* All lands necessary for permanent structures, construction areas, public access areas and fish and wildlife purposes will be acquired in fee. No interests need be acquired in areas subject to the Government's right of navigational servitude. Spoil disposal areas may be acquired in fee upon approval of HQDA (DAEN-REA-P).

(b) *Lands Over Which Easements are to be Acquired.* (1) Permanent easements are required for channel improvements, navigation pools, navigation aids, and spoil disposal areas for future maintenance. Requirements for navigation aids should be coordinated by the District Engineer with the local Coast Guard District Commander.

(2) Temporary easements may be acquired for temporary disposal of spoil, and temporary construction and borrow areas.

(3) In navigation-only projects, the right to permanently flood should be acquired in all lands located within the navigation pool and the right to occasionally flood should be acquired in lands above the pool. However, when the area to be occasionally flooded above the navigation pool consists of a narrow band of land, the right to permanently flood may be taken therein, to avoid acquisition of two different estates from the same ownership, and/or to reduce overall costs of acquisition.

§ 644.4 Reservoir Projects.

(a) *Joint Land Acquisition Policy for Reservoir Projects.* The joint policies of the Department of the Interior and the Department of the Army, governing the acquisition of land for reservoir projects, are published in the FEDERAL REGISTER, dated February 22, 1962, Volume 27, page 1734. On July 2, 1966, the Joint Policy was again published in 31 FR 9108 as follows:

A joint policy statement of the Department of the Interior and the Department of the Army was inadvertently issued as a Notice in 27 FR 1734. Publication should have been made as a final rule replacing regulations then appearing in 43 CFR Part 8. The policy as it appears in 27 FR 1734 has been the policy of the Department of the Interior and the Department of the Army since its publication as a Notice and is now codified as set forth below.

Joint Policies of the Departments of the Interior and of the Army Relative to Reservoir Project Lands

Sec.
8.0 Acquisition of lands for reservoir projects.
8.1 Lands for reservoir construction and operation.
8.2 Additional lands for correlative purposes.
8.3 Easements.
8.4 Blocking out.
8.5 Mineral rights.
8.6 Buildings.

Authority: The provisions of this Part 8 issued under Sec. 7, 32 Stat. 389, sec. 14, 53 Stat. 1197; 43 U.S.C. 421, 389.

8.0 *Acquisition of lands for reservoir projects.* Insofar as permitted by law, it is the policy of the Departments of the Interior and of the Army to acquire, as a part of reservoir project construction, adequate interest in lands necessary for the realization of optimum values for all purposes including additional land areas to assure full realization of optimum present and future outdoor recreational and fish and wildlife potentials of each reservoir.

8.1 *Lands for reservoir construction and operation.* The fee title will be acquired to the following:

(a) Lands necessary for permanent structures.

(b) Lands below the maximum flowage line of the reservoir including lands below a selected freeboard where necessary to safeguard against the effects of saturation, wave action, and bank erosion and to permit induced surcharge operation.

(c) Lands needed to provide for public access to the maximum flowage line as described in paragraph 1b, or for operation and maintenance of the project.

8.2 *Additional lands for correlative purposes.* The fee title will be acquired for the following:

(a) Such lands as are needed to meet present and future requirements for fish and wildlife as determined pursuant to the Fish and Wildlife Coordination Act.

(b) Such lands as are needed to meet present and future public requirements for outdoor recreation, as may be authorized by Congress.

8.3 *Easements.* Easements in lieu of fee title may be taken only for lands that meet all of the following conditions:

(a) Lands lying above the storage pool.

(b) Lands in remote portions of the project area.

(c) Lands determined to be of no substantial value for protection or enhancement of fish and wildlife resources, or for public outdoor recreation.

(d) It is to the financial advantage of the Government to take easements in lieu of fee title.

8.4 *Blocking out.* Blocking out will be accomplished in accordance with sound real estate practices, for example, on minor sectional subdivision lines; and normally, land will not be acquired to avoid severance damage if the owner will waive such damage.

8.5 *Mineral rights.* Mineral, oil and gas rights will not be acquired except where the development thereof would interfere with project purposes, but mineral rights not acquired will be subordinated to the Government's right to regulate their development in a manner that will not interfere with the primary purposes of the project, including public access.

8.6 *Buildings.* Buildings for human occupancy as well as other structures which would interfere with the operation of the project for any project purpose will be prohibited on reservoir project lands.

(b) *Application of Joint Policy by Corps of Engineers.* In order to assure that the water and land areas of reservoirs constructed by the Corps are available to the public, the lands which provide access along the shore of the reservoir will be supplemented at selected locations for concentrated public use. Where projects have either recreation or fish and wildlife, or both, as project purposes, additional lands will be acquired as set out in the authorization and specified in design memoranda. The policy contemplates that the United States own in fee a continuous area of land around the reservoir above the water level to insure ready access along the shore. However, certain exceptions have been adopted, as set forth hereinafter. Under the Joint Policy the Corps will take an adequate interest in lands, including areas required for public access, to accomplish all of the authorized purposes of the project and thereby obtain maximum public benefits therefrom. The statements in the policy which define the land interests to be acquired in particular areas are guidelines in application of policy.

(1) *Land to be Acquired in Fee.* (i) Lands necessary for the dam site, construction areas and permanent structures.

(ii) The lands below a guide contour line (guide acquisition line) established with a reasonable freeboard allowance above the top pool elevation for storing water for flood control, navigation, power, irrigation, and other purposes, referred to in this paragraph as the "full pool" elevation. In nonurban areas generally, this freeboard allowance will be established to include allowances for induced surcharge operations plus a reasonable additional freeboard to provide for adverse effects of saturation, wave action and bank erosion. Factors such as estimated frequency of occurrence, probable accuracy of estimates, and relocation costs, will be taken into consideration. Where this freeboard does not provide a minimum of 300 feet horizontally from the conservation pool, defined as the top of all planned storage not devoted exclusively to flood control, then the guide acquisition line will be increased to that extent. In the vicinity of urban communities or other areas of highly concentrated developments, the total freeboard allowance between the full pool elevation and the acquisition line may be greater than prescribed for nonurban areas generally, and shall be sufficient to assure that major hazards to life or unusually severe property damages would not result from floods up to the magnitude of the standard project flood. In such circumstances, however, consideration may be given to easements rather than fee acquisition for select sections if found to be in the public interest. However, when the project design provides a high level spillway, the crest of which for economy of construction is substantially higher than the storage elevation required to regulate the reservoir design flood, the upper level of fee acquisition will normally be at least equal to the top elevation of spillway gates or crest elevation of ungated spillway, and may exceed this elevation if necessary to conform with other criteria prescribed herein.

(iii) Lands to be acquired for public use, being those reflected in the Recreation Resources Appendix of the Phase I General Design Memorandum (ER 1120-2-400). The Phase I General Design Memorandum is required to be prepared and submitted for approval prior to submission of the Real Estate Design Memorandum.

(iv) Lands required for operation and maintenance of the project for:

(A) Frequently used operational areas.

(B) Clearing and disposition of debris.

(C) Maintenance, repair, and restoration.

(D) Anticipated erosion.

(E) Safeguarding public health, and malaria and mosquito control.

(F) Sanitation.

(v) Lands specifically authorized by the Congress for recreation and fish and wildlife purpose as defined by the Federal Water Project Recreation Act (Pub. L. 89-72) and Fish and Wildlife Coordination Act of 1958 (Pub. L. 85-624, 16. U.S.C. 661 et seq).

(A) All lands to be acquired for fish and wildlife purposes, either mitigation enhancement lands or estates therein required for other project purposes, will be presented in such a way as to distinguish clearly all such lands under each of the separate authorities involved. Specific guidance on fish and wildlife resources is contained in ER 1120-2-400 and ER 1120-2-404.

(B) The purpose of Pub. L. 89-72 is to provide a uniform policy with respect to recreation and fish and wildlife benefits and costs of Federal multiple-purpose water resource projects, and for other purposes.

(*1*) Pub. L. 89-72, as amended by section 77 of Pub. L. 93-251, does, however, create a unique provision relating to local participation in the recreation and fish and wildlife developments in water resource projects. Provisions of that Act, as amended, must be adhered to and contracts for administration of project lands and cost-sharing shall follow the amendments contained in section 77 of Pub. L. 93-251.

(*2*) Section 3(b) of Pub. L. 89-72 further provides that, notwithstanding the absence of an indication of intent as specified above, lands may be provided in project planning which would preserve the recreation and fish and wildlife potential of the project for *subsequent* development by local interests. The act prescribes that local interests must within 10 years after initial operation of the project enter into agreements specified above. In the event such agreements are not obtained, the proposed facilities cannot be constructed and the Corps may utilize the lands acquired for any lawful purpose within the Corps' jurisdiction or may offer said land for sale to its immediate prior owner or his immediate heirs at its appraised fair market value at the time of disposal. In the event that an agreement with the prior owner or his heirs cannot be reached in 90 days, disposal of the property will ensue pursuant to usual disposal procedures.

(*3*) The provisions of Pub. L. 89-72, as amended, are construed to apply to planning for projects authorized in 1965 or thereafter. Accordingly, all planning for future projects must be coordinated with local interests as defined in the law and all design memoranda relating to land acquisition or development of recreation or fish and wildlife areas must clearly set forth the potential of the project for such development and the intent of local interests in fulfilling the requirements of this law.

(*4*) Public Law 89-72, as amended, does not impose a requirement for local participation in all recreation and fish and wildlife areas. Development of recreation areas and planning for fish and wildlife areas will be in accordance with the guidelines set forth in this Chapter and related regulations.

(vi) Lands for resource preservation and/or enhancement in fulfillment of the National Environmental Policy Act of 1969 (Pub. L. 91-190, 83 Stat. 852) and Executive Order 11514 will be those approved in the authorizing document and/or those approved in the Recreation Resources Appendix of the General Design memorandum.

(vii) Uneconomic remnants required to be purchased in fee under section 301(9) of Pub. L. 91-646.

(viii) Recommendations may be made in the Real Estate Design Memorandum to eliminate lands from acquisition located within the approved guide acquisition line but above the guide contour line which are highly developed or devoted to public uses such as parks, golf courses, cemeteries, etc. Also, where for reasons of steep terrain, presence of highways and railroads, severe severance, or for other reasons, sound real estate practice indicates requirement for some adjustments in the area above the guide contour line, recommendations for such adjustments will be included in the real estate design memorandum, or will be subsequently submitted with proposed final real property acquisition lines, for approval of the Division Engineer in accordance with § 644.7.

(ix) Lands which will be covered by any sediment delta that is expected to form as the result of aggradation of streams draining into the reservoir. The estimate of this area shall be based upon the probable sediment inflow for a period at least equal to the economic life of the project.

(2) *Lands Over Which Easements are to be Acquired.* (i) Lands in reservoir areas of flood-control-only projects, which do not provide conservation pools, except as required for public access.

(ii) Lands required for a relatively short time for temporary structures or for use during the construction period only.

(iii) The Joint Policy of 1962 provides that flowage easements *may* be acquired in reservoir projects if *all* four conditions of Section 8-3 of the Joint Policy are met. For the purposes of land acquisition, to distinguish between fee and flowage easement "remote portions of the project area" as referred to in Section 8-3 of the Joint Policy are defined as those lands lying upstream from the conservation pool (the top elevation of all storage other than that devoted exclusively to flood control use) on the main stream and all significant tributaries thereof.

(iv) Lands downstream from the dam and required only for operational purposes.

(v) In flood control projects which do not have conservation pools, the right to occasionally flood should be acquired in all lands, except that the right to permanently flood should be acquired in those lands which may be subjected to permanent flooding, as in the case of a trash pool.

(3) *Levees in Lieu of Acquisition.* Where construction of levees or flood walls and necessary associated facilities for protection of lands and properties located within potential flowage limits of a reservoir is proposed in lieu of acquisition of fee title or easements over such properties, the protective structures shall meet the following minimum functional requirements:

(i) In urban communities or other areas of highly concentrated developments where overtopping of levees would result in major hazards to life or unusually severe property damage under anticipated future conditions, levee grades and designs shall be adequate to withstand without failure the occurrence of the standard project flood, assuming the reservoir is filled to highest level that is reasonably likely to prevail at the beginning of such a flood.

(ii) Under circumstances where it can be reasonably shown that possible overtopping of protective levees or flood walls as proposed would not result in unusual hazards to life or major property damage, levee grades shall be as high as economically practicable in consideration of apparent risks and costs involved, and flowage easements or other appropriate assurances from local interests shall be obtained insofar as necessary to protect the Government in the event the protective structures are overtopped.

§ 644.5 Mineral Acquisition Practices.

(a) *Procedure.* The procedure of the Corps of Engineers in acquiring the necessary land or interests therein to accommodate projects authorized by the Congress is to permit the reservation of the minerals in the land, unless the reservation is inimical to the operation of the project. In all cases wherein a reservation is permitted, the mineral interests are subordinated to the primary project purposes, including public access and preservation of environmental quality.

(b) *General.* (1) The multiplicity of ownerships in mineral interests, the variety of minerals and the different methods of mineral exploration, recovery and production make it impracticable to define in advance specific guidelines concerning the reservation of mineral interests and their subordination to primary project purposes in any given project. The initial planning documents, real estate design memoranda, and master plans will fully discuss and consider the extent of acquisition and/or reservation of mineral interests.

(2) Generally fee title to all subsurface interests will be acquired in areas required for all structures, areas required for project operations and public use including access, and in areas where the value of the subsurface interests is nominal. Reservation of coal, oil, gas and other minerals will be permitted whenever any aspect of mineral development will not interfere with project purposes. The reservation of mineral rights will be predicated upon the Government's right to so regulate their development as to eliminate any interference with project purposes and to minimize any adverse impact on the environment including aesthetic values.

(c) *Reservation of Minerals.* (1) When it has been determined that the reservation of minerals will not interfere with the purposes of the project, the minerals will be subordinated in accordance with the following guidelines:

(i) The estate providing for the subordination will not be utilized unless approved by HQDA (DAEN-REA).

(ii) Any subordination agreement, together with additional regulations incorporated by reference, must clearly define:

(A) The rights and obligations of the Government and the mineral owner, operator, and/or lessee.

(B) The control to be exercised over site development for mining purposes.

(C) Required land reclamation or restoration.

(D) Restrictions against pollution and degradation of project environment and aesthetics.

(E) Provisions for compliance inspection by the Government of all site development and mining activities over which the Government has control under paragraph (c)(1)(ii)(B) of this section.

(2) After execution of a subordination agreement as provided above, the District Engineer will develop a program for the surveillance of mineral activities at each project.

(3) The representatives of the Division and District Engineers are to be fully informed concerning the rights and responsibilities of the Government and the mineral owner and/or operator under the terms of the estates acquired for the subordination of minerals, and will periodically inspect all mining activities to insure compliance with the terms of the subordination agreement and any plan incorporated by reference into such agreement.

(d) *Off-Project Mineral Activity.* In connection with all drainage basins, where there is present or potential mineral activity upstream from a project or nearby lands outside the project limits, the District Engineer will:

(1) Establish and maintain liaison with Federal and State agencies having responsibility for the regulation of mineral activities and the control of environment in order to prevent adverse effects of mining on the project.

(2) Institute a system for monitoring adverse effects on the project such as sedimentation and acid drainage.

(3) Take steps to insure that Corps personnel in charge of the project are familiar with State and Federal laws governing the control of mineral recovery and the environment, as well as the Federal or State agencies responsible for the enforcement of such laws.

(4) Division and District Engineers are requested to use the Refuse Act of 1899 and any other legal remedies that may be appropriate in a particular situation in order to protect the interests of the United States and preserve the integrity of the project.

§ 644.6 Feasibility Reports and Design Memoranda.

(a) *Feasibility Investigations and Reports.* Survey investigations and reports are the studies and reports, specifically authorized by Congress and made by Division and District Engineers as assigned by the Chief of Engineers, to determine the scope, justification, and degree of Federal interest in protection and development of harbors, waterways, shores and beaches, and river basins. For water resource projects the reports include determination of needs of alternative plans of protection and development to be considered for recommendation to Congress for authorization as Federal projects. Survey reports should clearly specify real estate requirements, both immediate and prospective, and the responsibilities of Federal and non-Federal agencies relative thereto. The real estate estimates in the reports should be recent enough to be meaningful for the purpose intended. Documentation regarding the estimates, such as when and by whom made, nature and extent of field investigation, search for comparable sales and similar factual material, shall be maintained.

(b) *Phase I and Phase II General Design Memoranda.* (1) The General Design Memorandum (GDM) is a report on an authorized project. Its form and content are set forth in ER 1110-2-1150. It includes a real estate section, which consists of a general discussion of real estate requirements for the project, recommendations as to estates to be acquired, a gross appraisal of the necessary land and interests therein, and other features considered desirable to present all major real estate problems and to recommend solutions. Subject to the availability of data, minerals in the project area should be covered in the manner set forth in § 644.5. Detailed sales data are not necessary, but may be included if it is anticipated that recommendations will be made for early acquisition of interior tracts.

(2) Real Estate personnel will prepare the real estate section of the GDM. The requirements for current real estate estimates and necessary documentation thereof contained in § 644.6(a) are also applicable to this paragraph.

(c) *Real Estate Design Memoranda.* (1) Following approval of the Phase I GDM, a Real Estate Design Memorandum (REDM) will be prepared by the Division or District Engineer. Approval of the REDM shall be in accordance with ER 1110-2-1150, para 21b(2)(j).

No land shall be acquired for the project without approval of the initial REDM except (i) in the case of an advance land acquisition situation, (ii) acquisition for local cooperation project, or (iii) when a letter-type REDM has been submitted. The REDM will include the following in the order set forth below:

(A) A statement that this REDM is tentative in nature for planning purposes only and that both the final real property acquisition lines and the estimate of value are subject to change even after approval of this REDM.

(B) Project authorization, designation, location and date of approval of GDM Phase I, including the Recreation Resources Appendix (App A, ER 1110-2-1150).

(C) General description of the area and estimated total acreage. The total acreage will be broken down as to fee and easement areas. The fee will be further broken down to indicate, separately, the estimated acreage required for the various authorized project purposes.

(D) If any Government-owned land is within the area, indicate the Government's estate, degree of interest required for project purposes, and views of the local representative of the controlling agency as to use for project purposes (see Act of July 26, 1956 (70 Stat. 656) with respect to national forest land).

(E) Appraisal information containing a general statement as to character, present use and highest and best use of the land, local economic conditions which may affect the trend of real estate values in the community and the gross estimate of value for the area to be acquired under the REDM. The gross appraisal on which this estimate is based should be forwarded concurrently to HQDA (DAEN-REF) WASH DC 20314.

(F) Information necessary to ascertain responsibility under Pub. L. 91-646 including but not limited to the following:

(*1*) The number of persons, farms and businesses to be displaced.

(*2*) An estimate of all costs, including contingencies to be incurred as a result of compliance with Pub. L. 91-646. Part 641 of this subchapter sets out the items to be considered in estimating these costs.

(*3*) Information regarding the availability of replacement housing.

(G) Estimated cost to the United States of lands, easements, and rights-of-way necessary for acquisition by the United States for:

(*1*) Access roads to project area. A statement will be included as to whether existing public roads will be utilized within the purview of 33 U.S.C. 701r-1 or new rights-of-way for access roads will be acquired, with the estimated cost of such new rights-of-way. The proposed plan of access during construction will be fully described.

(*2*) Relocation of highways, roads, railroads, pipelines, and utilities (ER 1180-1-1, Section 73). Statement will be included as to whether the Government or the owner(s) will acquire new rights-of-way, if any, necessary for the various relocations.

(H) Number of structures and facilities which will come within the purview of section 111 of the Act of Congress approved July 3, 1958 (Pub. L. 85-500), and a preliminary estimate of Government costs (ER 1180-1-1, Section 73).

(I) A study, in accordance with § 644.5, of present or anticipated mineral activity in the vicinity of the project which may affect the operation thereof. A recommendation including cost estimate, if applicable, regarding the acquisition of the minerals should also be included in this section of the REDM.

(J) A discussion of standing timber and other vegetative cover in proposed recreation areas and other areas above the conservation pool which have recreation or scenic value. Recommendations should be made as to the significance of such timber and cover and as to whether reservation of standing timber should be permitted in the various parts of the fee area.

(K) A map(s) showing the area which is the subject of the REDM, indicating the acquisition guide line, contour line, the tentative blocked out fee line, multipurpose pool, and lands in which the acquisition of easements is recommended. The map(s) will show, where appropriate, the dam site, construction area, borrow areas, spoil areas, public access areas, fish and wildlife areas, and recreation areas. In addition, the appropriate map(s) will have outlined thereon the items of construction or major project features. Access roads and railroad rights-of-way required for these areas will also be shown. Chapter 3 of EP 405-1-2 relates to the preparation of maps. With respect to a project where it is planned to submit several REDMs covering portions of the project, the initial REDM will contain a map showing the entire project, with the information shown thereon as indicated above, insofar as this information covering the entire project is then available. All subsequent REDMs will contain the same type of map, on which will be shown the area(s) on which REDMs have been previously submitted with each such area keyed to the number of its REDM. Maps shall be of sufficient scale to be legible and to permit ready interpretation of pertinent features.

(L) An aerial mosaic, if available, to provide a pictorial support to the rest of the report concerning involved problems.

(M) Discussion relating to the acquisition or relocation of towns and cemeteries within the project area (ER 1180-1-1, Section 73).

(N) A realistic estimate of administrative costs, giving due recognition to existing and foreseeable conditions. To assure direct relationship between costs and estimates, the breakdown of these estimates will conform to the prescribed acquisition activity cost items as set forth under Real Estate Schedule/Cost and Performance, ENG Form 4564, or any further breakdown which the District Engineer may consider desirable. Included as a minimum requirement will be: Estimated administrative costs for mapping, surveying, and boundary monumentation, appraising, title evidence, negotiating and closing direct purchases, condemnation, and relocation assistance.

(O) Summary of project real estate costs, total all project real estate costs by category, i.e., land cost, improvements, severance, Pub. L. 91-646 costs, relocations, minerals, contingencies, administrative costs, etc.

(P) Schedule of acquisition.

(Q) Discussion and recommendations concerning the nonstandard estates proposed for acquisition and the real property boundary lines.

(R) The extent of the existing navigational servitude (ER 1165-2-302).

(S) The REDMs will be assigned a single basic number for each project; succeeding REDMs will be given alphabetical suffixes to the basic assigned number—for example, REDM Nos. 5, 5A, 5B, etc. Copies of the letter of transmittal and indorsements thereon will be inserted in the front of each copy of the REDM. A cover sheet will list chronologically all REDMs (including supplements thereto and brief letter-type memoranda) previously submitted, and will show dates submitted by the District Engineer and, if approved, dates of approval thereof.

(2) Upon approval of each REDM, the Division or District Engineer may, subject to the availability of funds, proceed with the acquisition of land and/or interests therein. The REDM, as approved, will constitute the overall real estate plan for acquisition of the area covered by the REDM. Whenever changes in the approved REDM are required, a supplementary REDM describing the proposed changes and setting forth the reasons therefor will be submitted. Approval of a supplemental REDM is required before acquisition can proceed in the area in which the changes are proposed.

(3) Prior to the approval of the REDM, Division and District Engineers should, subject to the availability of funds, proceed with preliminary real estate work, in the same manner as set out in § 644.30. No action will be taken to solicit an offer from a landowner for the purchase of his land until the acquisition has been approved and subject to availability of funds and compliance with the applicable provisions of Pub. L. 91-646.

(4) An REDM is not required for projects authorized by the Congress subject to the condition that local interests furnish without cost to the United States the necessary lands, easements, and rights-of-way. However, the GDM should include a statement enumerating the requirements of local cooperation, the name of the local interests proposing to fulfill said

requirements, an estimate of land costs, and any other information pertinent thereto.

(5) Number and content of Real Estate Design Memorandum.

(i) With respect to reservoir projects involving an extensive real estate program, it is considered preferable that more than one REDM be prepared so that each will cover a segment or group of segments, making up the total project, consistent with the planned schedule of acquisition.

(ii) For those projects, requiring two or more REDMs to cover the project area, each REDM will include all contiguous lands for each public access point and recreational site proposed within the area covered by that REDM. Noncontiguous areas planned for these purposes that are located beyond the limits of the REDM involved will be omitted therefrom. This procedure does not apply to areas authorized for fish and wildlife purposes. Lands authorized specifically for fish and wildlife purposes may be included either in a conventional REDM, along with other project lands or be submitted as a separate REDM, depending on convenience in preparation and size of the area. However, in either event, whenever practicable, the entire area proposed for this purpose should be covered in one REDM, as a unit.

(iii) For smaller projects, not involving an extensive real estate program, all real estate requirements, including those for public access, fish and wildlife, and recreation, may be covered in a single REDM.

(d) *Blocking Out.* The following are guidelines to be observed to the extent possible in preparing the REDM. These guidelines will be adhered to by the Division Engineer in his approval of the final real estate acquisition lines.

(1) Close blocking out will be accomplished in accordance with sound real estate practices.

(2) For land acquired in fee, the blocked out final real estate acquisition line will be established in such manner as to minimize costs and cause the least disruption in the use of the remainder of the ownership.

(3) Severance damages will be avoided to the extent possible consistent with real estate requirements for the project. In accordance with section 301 of Pub. L. 91-646, if the acquisition of part of a tract will render the remainder an uneconomic unit, an offer must be made to purchase the entire tract.

(4) It is conceivable that, in certain instances, acquisition of an easement will result in an uneconomic remainder and this requires application of section 301 of Pub. L. 91-646, as in paragraph (d)(3) of this section.

(5) A remnant without access need not be acquired if:

(i) The owner desires to retain the property and releases the Government from damages for lack of access, and

(ii) The obtaining of such release in lieu of acquisition is concurred in, in writing, by the local road authority, and the local road authority is released from damages due to loss of access.

(6) For lands to be acquired in fee or easements, close tangent will be used, generally following the acquisition line.

(7) When small portions of additional properties, not otherwise needed for the project, are within the acquisition line, they may be omitted if to do so will not materially affect the operation and maintenance of the project as determined by operational elements.

§ 644.7 Acquisition lines.

(a) *Tentative Acquisition Lines.* As indicated in § 644.6(c)(1)(iii)(K), tentative acquisition lines are shown on maps which are part of the REDM. However, at that time, the lines will, to some extent, be irregular and located without full regard to their effect upon fringe tracts. It will, therefore, be necessary to establish final acquisition lines, in accordance with sound real estate practices. Accordingly, fringe tracts will not be acquired until the final acquisition lines are approved by the Division Engineer.

(b) *Submission.* As soon as possible after authority has been granted to acquire the land and/or interest therein, the District Engineer will complete appraisals covering the fringe tracts. Thereupon, a map showing proposed final acquistion lines will be submitted to the Division Engineer, accompanied by justification and reasons therefor. This submission may be for an entire project or by segments or units. However, if the final map is submitted on a segment or unit basis, each segment or unit must be complete in itself and not be dependent on another segment or unit not submitted for approval.

(c) *Approval.* The Division Engineer is authorized to approve final acquisition lines, but shall not delegate this responsibility to District Engineers. This authority is subject to the following:

(1) Except for the addition or deletion of individial ownerships, or portions thereof, on the basis of the criteria contained in § 644.6(d), approval of any changes in the overall plan will be in compliance with ER 1110-2-1150.

(2) Estates in individual tracts may be changed if consistent with the overall plan. Approval, however, will be required from HQDA (DAEN-REA-P) if the estates are non-standard.

§ 644.8 Planning and scheduling real estate activities.

(a) *Normal Scheduling.* (1) The objective of a planned program is to provide for the early acquistion of land to avoid enhancement in land prices and a minimum of inconvenience to the property owners. Also, it is essential that there be adequate planning of the land acquisition program to insure that there is no interference with unacquired properties as a result of construction activities.

(2) It is essential that adequate funds be programmed on ENG Form 2213, Advance Engineering and Design Planning Schedule (PB-2B), to proceed with real estate planning; preparation of Real Estate Design Memoranda; determination of final project boundaries; and preliminary real estate work to the point where land acquisition can be started as soon as construction funds become available.

(3) Surveys and boundary monumentation and/or marking shall be completed prior to acquistion.

(4) Funds will be programmed for acquisition of lands for the construction area and/or other areas initially required within the first year, and for acquisition of lands for the other features of the project as rapidly as necessary real estate data can be assembled. For projects with major impoundment features and with scheduled construction periods of more than two years, funds will be programmed at a uniform level so that total real estate requirements will be covered by accepted offers to sell or declarations of taking filed in court by the end of two-thirds of the overall construction period.

(b) *Public Information.* (1) The real estate activities of the Corps are extremely sensitive, since they disrupt the lives of individuals and take their homes, farms and businesses. Therefore, the importance of keeping landowners and others having an interest in the land informed of the land acquisition program is emphasized. In order to avoid false rumors and to permit the affected owners to formulate plans for the future, information concerning the land acquisition program, procedures with respect thereto, and the specific effect on the individual properties, will be furnished to the affected owners at the outset of the project.

(2) Section 302 of Pub. L. 86-645 (33 U.S.C. 597) is quoted, in part, for guidance:

> Within six months after the date that Congress authorizes construction of a water resource development project under the jurisdiction of the Secretary of the Army, the Corps of Engineers shall make reasonable effort to advise owners and occupants in and adjacent to the project area as to the probable timing for the acquisition of lands for the project and for incidental rights-of-way, relocations, and any other requirements affecting owners and occupants. Within a reasonable time after initial appropriations are made for land acquisition or construction, including relocations, the Corps of Engineers shall conduct public meetings at locations convenient to owners and tenants to be displaced by the project in order to advise them of the proposed plans for acquisition and to afford them an opportunity to comment. To carry out the provisions of this section, the Chief of Engineers shall issue regulations to provide, among other things, dissemination of the following information to those affected: (1) Factors considered in making the appraisals; (2) desire to purchase property without going to court; (3) legal right to submit to condemnation proceedings; (4) Payments for moving expenses or other losses not covered

by appraised market value; (5) occupancy during construction; (6) removal of improvements; (7) payments required from occupants of Government-acquired land; (8) withdrawals by owners of deposits made in court by Government; and (9) use of land by owner when easement is acquired.

(3) Within a reasonable time after initial appropriations are made for land acquisition or construction, including relocations, Division and District Engineers will conduct meetings with landowners. The United States Senators of the state or states and Members of the House of Representatives of the district or districts in which the project is located should be invited to attend. Normally, the public meetings should be scheduled prior to the commencement of the land acquisition program. The agenda for the meetings will include not only the nine specific items listed in section 302, Pub. L. 86-645, but all other items of a nature that will assist landowners and tenants in understanding all of the Corps' real estate procedures such as, but not limited to: Acquisition schedules, the type of land interests to be acquired under the Joint Policy, approximate acquisition lines, management of the project, etc. In addition to the foregoing, pamphlets containing this information and the information brochure explaining the benefits to landowners under Pub. L. 91-646 will be given wide distribution at approximately the same time the landowners meeting program is initiated, and copies will be furnished to the appropriate United States Senators and Members of the House of Representatives.

(4) Inquiries, comments of landowners and tenants, and problems developed at the landowners meetings should be recorded or, at least, a detailed written resume made. HQDA (DAEN-REA-P) should be informed as to the outcome of these meetings. Effective follow-up to supply any information not available at the meeting, or to consider any particular problems presented, is essential to realize the full advantage of the public relations program.

(5) The provisions of this paragraph are applicable to all water resource development projects, including all local cooperation projects for which real estate is to be acquired in whole or in part by local interests. Initial information as to such projects for which real estate acquisition is exclusively a local interest responsibility may be given, within six months after project authorization, by either the local interest or Federal Government, through the media best adaptable under the circumstances. Advice should be given as to the timing of acquisition of the lands and lesser interests, and also as to the extent to which acquisition will be accomplished by the local interests. After appropriations, the local interests should be encouraged to sponsor and conduct a landowners meeting with attendance by Corps of Engineers representatives. If there is a joint responsibility for real estate acquisition, the local interests should explain the scheduled requirement for possession of the lands involved and their acquisition procedures, and the Corps of Engineers representatives should explain the procedures followed when lands are condemned by the Federal Government on behalf of local interests, and the authority for each action.

(6) If local interests refuse to call a landowners meeting, the District Engineer should call such a meeting, to explain the general construction features of the project, to inform the landowners and tenants that local interests are obligated to acquire the necessary lands, to state that we cannot explain the exact procedures which will be followed by local interests, but to explain the procedures followed when lands are condemned by the Federal Government on behalf of local interests. If only a very few landowners and tenants are involved, local interests may hold their meeting in the District Engineer's office or at a location more convenient to the landowners and tenants. While this would not be a formal meeting, the same type of information would be furnished. Here, also the District Engineer should call such a meeting if local interests refuse to do so.

(7) To summarize, public (landowners) meetings are required by section 302 of Pub. L. 86-645. This requirement applies to local cooperation projects as well as to the large Federal water resources development projects.

The meetings will be held by Division/District Engineers, to comply with the law, if local interests refuse to call meetings at which information would normally be furnished jointly by the local interests and by the Corps of Engineers representatives.

(8) Real Estate personnel and the Public Affairs Officers of the Division and District Engineers should cooperate closely in planning vigorous public relations programs as contemplated in this paragraph and through the press, radio, and television.

(c) *Land Acquisition Funds for Land Acquisition in Advance of Project Construction.* (1) A Land Acquisition Fund in the amount of $2 million was established as a part of the appropriations contained in the Public Works for Water, Pollution Control, and Power Development and Atomic Energy Commission Appropriation Act, 1971 (Pub. L. 91-439). Comments of the House Appropriations Committee in establishing the Fund are contained in House Committee Report No. 91-1219, 91st Congress, 1st Session, as follows:

> New land acquisition fund. The committee has approved the budget proposal to allocate $2 million to establish a fund for land acquisition, in advance of project construction, to alleviate severe hardship cases and to avoid price escalation. The proposal has been approved with the understanding that prior committee approval will be obtained for initial purchases in each project area and that use of the fund shall be confined to those projects on which planning has progressed to the point that the damsite has been finalized, and it is known with certainty the lands to be acquired for the project.

This fund was increased to $3 million by the Public Works for Water and Power Development and Atomic Energy Commission Appropriation Act of 1973 (Pub. L. 92-405).

(2) *Applicability.* Expenditures from the Fund are applicable to *authorized* water resource development projects for which land acquisition is a Federal responsibility.

(3) *Guidelines for Utilization of the Fund for Advance Land Acquisitions.* (i) The Fund will be used to acquire private and non-Federal publicly-owned properties at authorized water resource development projects on which planning has progressed to the point that the damsite has been finalized and it is established with certainty that the individual properties will be required for the project.

(ii) Only those individual properties will be considered for acquisition where it can be shown that advance acquisition of the properties will alleviate severe hardship to the landowner and/or will avoid unusual land price escalation. Unusual price escalation cases involve those individually owned properties where it can be demonstrated that the land value will materially escalate, prior to commencement of the land acquisition program for the project from future appropriations for land acquisition or construction, because of imminent actions which will change the highest and best use of land, such as zoning actions, planned construction on the land and other changes in real estate market factors which will materially escalate land values. Normal land escalation occurring to all properties in general within a project will not be considered as a basis for acquisition. Hardship cases include, but are not necessarily limited to, cases involving the following:

(A) The landowner has a valid contract to purchase a replacement property and failure to dispose of his property inside the project will force him to default the contract, forfeit his deposit, or otherwise lose the benefits of the contract, and other replacement property is not available within the same area under similar terms;

(B) The property owner is forced to relocate from the area due to his employment or other circumstances beyond his control, and the Government's project has so affected the sale of properties within the project area as to make a sale to another private party at a fair and reasonable price extremely difficult; and

(C) Illness of the owner or other members of his family, or other personal hardship makes his relocation from the area necessary and the Government's project has so affected the sale of properties within the project area as to make a sale to another private party at a fair and reasonable price extremely difficult.

(D) As indicated above, these examples are not intended to exclude other cases where, in the exercise of sound judgment, actual hardship is found to exist.

(iii) Individual tract ownerships recommended for advance acquisition by Division and District Engineers and approved by OCE will be acquired by direct purchase or through the filing of condemnation proceedings, in accordance with normal procedures.

(4) *Procedures.* Individual tract ownerships which Division and District Engineers consider are hardship cases or involve unusual price escalation, within the guidelines set forth in paragraph (c)(3) of this section should be recommended to OCE for acquisition.

(i) Full justification must be submitted to HQDA (DAEN-CWB) WASH DC 20314 in support of the recommendation to acquire the individual ownerships.

(ii) If the recommendation is approved, action will be taken by OCE to obtain approval of the House and Senate Committees on Appropriations. Upon receipt of Committee approvals, the Division Engineer will be authorized to proceed with the acquisition action if sufficient funds are available from the Land Acquisition Fund.

(iii) Appropriate records will be maintained by District or Division Engineers of allocations made from the Fund which are used for approved acquisition cases. These funds will be accounted for under a designated account number.

(iv) When appropriations for land acquisition or construction of the Federal project are specifically made by the Congress, the initial allowance of funds to the project will be reduced by the amount previously allotted from the Land Acquisition Fund in order to replenish the Fund for use at other projects.

(d) *Acquisition for State or Local Interests—Resettlement Sites.* (1) Section 209 of Pub. L. 90-483 (82 Stat. 745) enacted August 13, 1968, provides that the Secretary of the Army may, prior to the approval of title by the Attorney General, acquire, enter upon, and take possession of lands or interests in lands by purchase, donation, condemnation or otherwise, whenever any State, or any agency or instrumentality of a State or local Government, or any nonprofit incorporated body organized or chartered under the law of the State, or any nonprofit association, shall undertake to secure any lands or interests therein as a site for the resettlement of families, individuals, and business concerns displaced by a river and harbor improvement, flood control or other duly authorized water resource project, and

(i) It is determined by the Secretary of the Army that the State or local interest is unable to acquire the necessary land, or unable to acquire it with sufficient promptness, and

(ii) The Governor of the State in which the site is located has requested such acquisition.

(2) *Cost of Acquisition.* The Act also provides that:

(i) All expenses of acquisition accomplished under the authority of the Act, including any award that may be made in a condemnation proceeding, the cost of title evidence, appraisals and any other costs incident to such acquisition, shall be paid by the State, agency, instrumentality or nonprofit body.

(ii) The State, agency, instrumentality or nonprofit body may repay such amount from any funds made available to it by any Federal department, agency, or instrumentality, other than the Department of the Army.

(iii) Pending such payment, the Secretary of the Army may expend from any funds appropriated for the project such sums as may be necessary to carry out section 209, Pub. L. 90-483.

(iv) To secure such payment, the State, agency, instrumentality or nonprofit body may be required to execute a proper bond before acquisition is commenced.

(v) Any sums paid by a State, agency, instrumentality or nonprofit body under Section 209 shall be credited to the appropriation for the project.

(3) *Determinations Required Before Application of Section 209.* No acquisition by the Department of the Army may be undertaken under this section until the Secretary of the Army has determined, after consultation with appropriate Federal, State and local government agencies, that:

(i) The development of a site is necessary in order to alleviate hardships to displaced persons;

(ii) The location of the site is suitable for development in relation to present or potential sources of employment; and

(iii) A plan for development of the site has been approved by appropriate local government authorities in the area or community in which the site is located.

(4) *Action by District or Division Engineer.* When the District Engineer is of the opinion that section 209 may be applicable to a given situation, after consultation with State and State agency officials, the Governor of the State should be advised of the pertinent provisions of the law and the assistance that can be rendered by the Secretary of the Army under the terms and conditions of the law at the request of the Governor. If planning towards resettlement is undertaken by a State, agency, instrumentality or nonprofit body, the District Engineer will keep advised of the progress of such local planning and will furnish guidelines and consultation to the local interests during development of the plan.

(5) *Implementation of the Plan of Resettlement.* When the final plan has been developed and approved by the appropriate Federal, State and local governmental agencies (which will include information showing that the site is necessary to alleviate hardships to displaced persons and suitable for development in relation to present or potential sources of employment), a showing has been made that the State is unable to acquire the necessary lands or interests therein or is unable to acquire the lands with sufficient promptness, the Governor has executed a request that the Secretary of the Army acquire the lands under the terms and conditions of the Act, and the State or agency of the State has executed a proper bond in an amount deemed necessary to cover total expenditures to be made by the Army for the land acquisition, the District Engineer should submit to HQDA (DAEN-REA-P) WASH DC 20314 a brief Real Estate Design Memorandum covering the land to be acquired under the plan. The REDM should be accompanied by the final approved plan and the information listed above in order that the Secretary may make the determinations as required by section 209(b) of Pub. L. 90-483. No action will be taken by the District Engineer to acquire the land, proposed for acquisition in the plan and the REDM, until receipt of authority from DAEN-REA-P to proceed with the acquisition. A complete record will be maintained of all land and administrative costs incident to the acquisition as a basis for a request for reimbursement to the State and/or the State agency or agencies. Upon authorization to the District Engineer to proceed with land acquisitions of the site, normal Corps land acquisitions procedures will be followed.

(6) *Conveyance of the Site to the State or State Agency or Agencies.* In accordance with section 209(c) of Pub. L. 90-483, upon completion of the acquisition of the site, a proper deed will be submitted to HQDA (DAEN-REA-P) WASH DC 20314 for execution by the Secretary of the Army, for conveyance of the land to the State or State agency, as appropriate. Evidence must be submitted that the terms and conditions of the deed have the approval of the Governor and the agency to which conveyance is to be made. The deed will not be delivered until reimbursement has been made to the United States for the land and administrative costs expended by the District Engineer incident to the acquisition of the site.

MILITARY (ARMY AND AIR FORCE) AND OTHER FEDERAL AGENCIES

§ 644.21 General.

(a) *Purpose.* Sections 644.21 through 644.30 describe the procedures of the Corps of Engineers relating to real estate planning and project authorization for the acquisition of land and interests therein for military projects, for the Department of Energy (DOE), and for other Federal agencies as required.

(b) *Applicability.* Provisions of these sections are applicable to the Office of the Chief of Engineers and all Division and District Engineers having real estate responsibilities.

(c) *General Procedures.* (1) AR 405-10 and AFR 87-1 outline the policies of the Department of the Army and the Department of the Air Force, respectively, with respect to real estate acquisitions.

(2) The policies of the Department of Energy (DOE) with respect to acquisition of real estate are generally set forth in requests of that agency for preparation of real estate design memorandums.

(3) The purpose of the planning function is to establish a sound basis for the acquisition of land and interests therein in accordance with existing law and broad procedures of higher authority; to collect all necessary real estate data; to correlate and evaluate these data from the standpoint of establishing the necessity for the proposed acquisition; to establish that no Government-owned or Government-controlled lands are available for the intended use; to determine the required estate, in accordance with existing policies, sufficient to protect the interests of the Government; and in general, to prepare each project for submission to the head of the interested department or agency, or his designee, and, where necessary, to the Department of Defense and the Committees on Armed Services of the Senate and House of Representatives, for approval.

(4) In the preparation of Real Estate Planning Reports, or Real Estate Summaries, consideration will be given to the procedures and criteria expressed in the regulations cited herein.

§ 644.22 Site selection.

When a requirement develops for a new installation or the extension of an existing installation, site selection will be the primary responsibility of the using service. A representative of the appropriate Division or District Engineer will participate in selection of sites for the Department of the Army and, upon request, in Department of the Air Force site selection and preliminary investigations. Commanders and site boards should be informed of any available lands, including marginal lands in civil works projects and available lands under the control of other departments and agencies, suitable for the desired purpose. The using service will request the Chief of Engineers or the appropriate Division or District Engineer to prepare a Real Estate Planning Report or Real Estate Summary, making reference to the prior Site Selection Report if one was prepared.

§ 644.23 Real Estate Planning Documents.

(a) *Real Estate Planning Reports.* (1) A Real Estate Planning Report (REPR), as shown in Figure 2-1 in EP 405-1-2, will be prepared by the Division or District Engineer for all major fee and easement projects other than Reserve Component projects and extinguishment of grazing privileges on Federal lands. The request for such REPR may be initiated by any command or echelon of the Army or Air Force (or by the Washington Headquarters or field operations offices of DOE for a Real Estate Design Memorandum). Certain items contained in Figure 2-1 (EP 405-1-2) relate only to Department of the Air Force land acquisition programs for runways and approach zones and are not applicable to other projects. Such items will be omitted from REPRs where not applicable. When forwarding the REPR, a copy of the Reviewing Appraiser Comment, concerning the estimated land values assigned therein, should be included as an inclosure to the transmittal letter.

(2) On Department of the Air Force projects where estimated cost is not in excess of $25,000, brief REPRs are to be prepared for issuance of directives by the approprate Air Force Regional Civil Engineer (AFRCE). Such reports need not be submitted to the Chief of Engineers except in those cases in which the major command submits a copy to Headquarters, USAF. This report should contain adequate information on the items listed in the following outline but need not be limited thereto:

(i) Requirement for the property.

(ii) Cost estimate of the property with indication of the method used in arriving at the estimate.

(iii) Summary sheet showing the acreages, interests to be acquired, improvements and estimated costs, including the administrative costs of acquiring the real property and all costs in connection with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646).

(iv) Map showing property to be acquired, ownerships, and relation to existing installation, where appropriate.

(v) In reports covering the acquisition of runway clearance easements, a profile, topographic, and obstruction drawing should be furnished.

(vi) Discussions of any peculiar or unusual problems anticipated in connection with the proposed acquisition including relocation assistance required by Pub. L. 91-646.

(vii) Recommendations of the office preparing the report.

(b) *Planning Documents for Reserve Component Acquisitions.* Figure 2-2 in EP405-1-2 is a sample of an REPR for use in acquisition of land for the U.S. Army Reserve Program. This report omits some items which appear in the usual planning report but includes other items particularly applicable to U.S. Army Reserve sites.

(1) *Real Estate Planning Report.* The REPR for Reserve Component acquisitions should contain the following:

(i) A list of all sites inspected with reasons for rejection of the other sites.

(ii) Description of physical characteristics of the site.

(iii) Type and extent of grading and drainage required.

(iv) Soil and foundation conditions with classification of overburden materials (to be determined by test borings only if conditions indicate this necessity).

(v) Availability of adequate access, water supply, electricity, gas for space heating, sewage disposal, drainage conditions, and telephone services. Where it is necessary to construct or extend streets, water, sewer, or other utility facilities to serve the selected site, a written commitment will be obtained from the municipal authorities assuring the United States that the municipality will perform such work without cost to the United States, or indicating the proportionate share of the costs the municipality will bear. This commitment will be made a part of the REPR.

(vi) Cost estimates of supporting facilities and any unusual building foundations, itemized to the degree practicable to indicate items, quantities, sizes, unit prices and totals.

(vii) A preliminary site plan, showing existing conditions and proposed layout, to insure adequacy of the site for its intended ultimate use.

(viii) A formal legal commitment in the form of a resolution or other instrument authorizing a long-term, nominal-rental lease or a donation, together with a reference to the authority to grant the lease or make the donation, in instances where land is owned by a State, county, city or other political subdivision.

(ix) A draft of the proposed lease in terms acceptable to the lessor, taking into consideration the requirements in DOD Directive 4165.16.

(2) *Agreements for Joint National Guard-Army Reserve Center.* Title 10, United States Code, 2231 through 2238, DOD Directives 1225.2 and 1225.5, and AR 140-478 contain policy and directions for the establishment of this type of training facility. The Division or District Engineer will participate in negotiation of the joint-use agreement and preparation of the necessary instruments, in coordination with local Army Reserve and National Guard representatives. A copy of the agreement so negotiated will be attached to each copy of the REPR prior to its distribution for review. DOD Directive 1225.2 provides in part: "The agreement shall remain in full force and effect for the fixed term of years which represents the estimated useful life of the facility." This provision has generally been interpreted as fixing the use term at 25 years, although the probably useful life of a well-maintained armory type structure is much longer. The DOD provision states a minimum requirement; however, it does not preclude the Army from securing a longer period of use. In order to secure a use term more commensurate with the Government investment, joint-use agreements, at a minimum, will be set up on a 25-year

basis, with the option on the part of the Government to renew for an additional 25-year period under the same terms and conditions.

(3) *Real Estate Summary.* Considerable time, effort and funds can be saved if REPRs are foregone in those cases involving acquisition of property for U.S. Army Reserve and Army National Guard use by transfer from another military department or the General Services Administration. The Real Estate document in support of such proposed acquisitions will be a Real Estate Summary which will contain the following elements only:

(i) Authority for request.

(ii) Acreage and estate.

(iii) *Estimated* gross fair market value.

(iv) Map.

(v) Excess status of land.

(vi) Description of improvements (including building numbers and square feet).

(vii) Justification for use of the property as provided by the Command. Proposed construction (if any) should be included.

(viii) Engineering Feasibility Study (if construction is planned).

(ix) Draft Acquisition Report is required for clearance under Title 10 U.S.C. 2662 if *estimated* gross fair market value is over $50,000 for acquisition by transfer from another military department.

(c) *Lease Planning Reports.* Reference is made to AR 405-10 and AFR 87-1, concerning requests for leasehold acquisitions. A Lease Planning Report will be submitted upon request of the Chief of Engineers or the using service. Figure 2-3 in EP 405-1-2 is a sample of a Lease Planning Report.

(d) *Grazing Land Reports.* (1) When Federal grazing lands are a part of a project and it is proposed to cancel, or to prevent the use of, grazing privileges thereon, under authority contained in the Act of Congress approved July 9, 1942, as amended (43 U.S.C. 315q), the REPR will be utilized with appropriate changes. The report will disclose each of the ranch units comprising grazing privileges, indicating, in tabulated form, the name of each operator, acreage owned in fee, acreage of State-owned land held under lease, acreage of railroad land held under lease, acreage of other privately owned land held under lease, acreage under Federal grazing permits or licenses, total acreage in ranch unit, total carrying capacity of ranch unit, and actual number of stock being carried on each ranch unit; whether project will be classified as a permanent or temporary installation; other acquisition problems, such as mining and water rights or claims, which may be encountered; and a project map indicating project boundaries, Federal and State-owned lands, and location of mining and water rights or claims.

(2) The cost estimate will be prepared in accordance with Subpart B.

(e) *Distribution and Approval of Planning Reports*—(1) *Army Projects.* Upon completion of a fee and/or easement planning report or a Lease Planning Report, the report will be processed as outlined in AR 405-10. Information will be included in the transmittal letter concerning status of environmental assessment or impact statement.

(2) *Air Force Projects.* (i) Upon the completion, review and approval of a fee and/or easement planning report, the District Engineer will forward copies of the planning report to the Division Engineer who will forward the original and one copy with appropriate recommendations to HQDA (DAEN-REA-L) WASH DC 20314. Simultaneously with this action, the Division Engineer will furnish the Major Air Command with six copies of the planning report for review, approval, and subsequent transmittal to Headquarters, USAF.

(ii) After preparation, review and approval, the District Engineer will submit the Lease Planning Report, wherein the estimated annual rental is in excess of $25,000, to the Division Engineer. Upon review and approval, the Division Engineer will forward the original and a copy, with appropriate recommendations, to DAEN-REA-L. Simultaneously with this action, the Division Engineer will furnish the Major Air Command with two copies of the report. The Chief of Engineers will review the report and forward the original to Headquarters, USAF, with appropriate recommendations.

(3) *DOE Projects.* Upon completion of a fee and/or easement real estate design memorandum and review and approval by the District Engineer and, in turn, the Division Engineer, a copy of the report will be submitted to the appropriate DOE office for review and approval. When notice of approval is received, the District Engineer will transmit, through the Division Engineer, the original and two copies of the REDM, with recommendations, and evidence of approval by the DOE field office, to HQDA (DAEN-REA-P) WASH DC 20314. Upon review and approval, the Chief of Engineers will transmit the original and one copy of the REDM to Headquarters, DOE, for approval and further action.

§ 644.24 Acquisition by Transfer from other Government Departments or Agencies (except Public Domain).

When a requirement develops for the acquisition of Government-owned real property and an appropriate request is received for the acquisition, the District Engineer will prepare and submit, through the Division Engineer, to HQDA (DAEN-REA-L) WASH DC 20314 a Real Estate Planning Report (Figure 2-1 in EP 405-1-2) (or a brief report, if it is determined this would be sufficient) setting forth the requirements for the property, the market value thereof, the "in place" value of existing improvements, the estimated cost of the proposed construction, attitude of the local representative of the department or agency having control, and such other items as are necessary to give full discussion of the real estate implications, for consideration and the obtaining of a real estate directive for the acquisition by transfer.

§ 644.25 Withdrawal of Public Domain for Defense Purposes.

(a) The Act of Congress approved February 28, 1958 (Pub. L. 85-337, 72 Stat. 27) provides that all withdrawals and reservations of public domain land, water, or land and water, or restrictions on use of areas in the Continental Shelf, aggregating an area of more than 5,000 acres for any one defense project, shall be by Act of Congress. Upon receipt of a request for withdrawal or reservation of lands of the public domain or for restrictions on exploration and exploitation in the Continental Shelf, and in order that the Chief of Engineers may present the project to higher authority for approval and submission to the Congress, if approved, the District Engineer will prepare and submit, through the Division Engineer, to HQDA (DAEN-REA-L) WASH DC 20314 a Real Estate Planning Report, including the following items.

(1) A copy of the request from the Army or the using service.

(2) Complete information relative to the eight items specified in section 3 of Pub. L. 85-337 (43 U.S.C. 156).

(3) If the proposed withdrawal constitutes an expansion of an existing installation, pertinent data relative to the lands constituting the existing installation.

(4) Information relative to outstanding mineral, grazing, water and other rights.

(5) A statement as to the estimated cost:

(i) Of extinguishing such rights; and

(ii) Of suspending the exercise of such rights on a leasehold (annual rental) basis.

(6) Map(s) indicating the exterior boundaries of the project; excepted areas, if any; location of mineral rights, water rights, and other resources discussed in the report.

(b) The District Engineer will also prepare and include a draft of application for withdrawal covering the eight items specified in section 3 of Pub. L. 85-337.

(c) Upon receipt of the REPR and draft of application for withdrawal, the Chief of Engineers will prepare a Real Estate Directive.

(d) The REPR, draft of application for withdrawal, and Real Estate Directive will be transmitted through the Chief of Staff and the appropriate Assistant Secretary of the Army to the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics) for approval of the acquisition and for coordination with the Department of the Interior (Bureau of Land Management). Upon receipt of approval from the ASD (MRA&L), the Chief of Engineers will dispatch the application to the Department of the Interior and will draft the necessary legislation for processing through normal legislative channels.

(e) It has been determined that the words "in the aggregate" in section 2 of Pub. L. 85-337 shall be interpreted as applying only to withdrawals of land since enactment of Pub. L. 85-337. For example, if 4,500 acres of public land had been withdrawn prior to enactment of Pub. L. 85-337 and the new application for withdrawal covers 1,000 acres, the requirements of Pub. L. 85-337 do not have to be satisfied. If the new application covering 1,000 acres is honored and the withdrawal completed and a later requirement for 4,500 acres of public lands developed, the requirements of Pub. L. 85-337 would have to be satisfied.

(f) Pub. L. 85-337 and the above instructions do not relate to the use of public lands under permit.

(g) In Department of Air Force cases, the District Engineer will continue to prepare such REPR's and to furnish such other services as are requested by the Major Air Commands.

(h) When the REPR contains a proposal for the acquisition of minerals, the local office of the Bureau of Land Management, Department of the Interior, will be furnished with a copy of the Mineral Section of the planning report, which will indicate the number and types of claims, areas involved, and the gross appraisal. Accompanying this Mineral Section will be a request that the Bureau of Land Management place an item in the next available budget for the funds required for the validation of the mineral claims involved. A copy of the Mineral Section, together with a copy of the request to the local office of the Bureau of Land Management, will be forwarded to HQDA (DAEN-REA-L) WASH DC 20314 for coordination with the Director, Bureau of Land Management, Department of the Interior, Washington, D.C. 20240.

§ 644.26 Required clearances.

(a) As stated in AR 405-10 and AFR 87-1, no real estate or interests therein will be acquired until there is legislative authorization for the acquisition (41 U.S.C. 14) and an appropriation available for the purpose.

(b) AR 405-10 and AFR 87-1 also outline the clearances which must be made within the Departments of the Army and the Air Force, with the Department of Defense, and with the Committees on Armed Services of the Senate and the House of Representatives before acquisition may proceed. The Chief of Engineers is responsible for initiating all clearance actions as to Army acquisitions. The Director of Engineering and Services (AF/PRE) and the Director of Planning, Programming and Analysis (AF/RDXI), as to industrial installations, of Headquarters, USAF, are responsible for initiating all clearance actions as to Air Force acquisitions.

§ 644.27 Authority to issue Real Estate Directives.

Where there is legislative authorization, an appropriation is available, and necessary clearances have been obtained, the formal Real Estate Directive (designating the land to be acquired, the estate to be acquired, and the amount of funds available for the acquisition) will be issued by the head of the interested department or agency, or his designee.

(a) Authority to issue all Department of the Army Real Estate Directives is vested in the Chief of Engineers. The Chief of Engineers has been delegated authority from the Secretary of the Army, and has redelegated to Division and District Engineers authority, to approve:

(1) Acquisition of permits from other Government departments and agencies, excepting the use of space in the National Capital Region.

(2) The making of minor boundary changes in approved projects to avoid severance damages, by including or excluding small tracts of land which will not decrease the usefulness of the project for the purpose for which being acquired.

(b) The delegated authority referred to in paragraph (a) of this section was redelegated to Division and District Engineers, provided it can be accomplished without the allotment of additional funds: *And provided,* That there is an existing Real Estate Directive. When there is a change in scope (area and/or funds), recommendation will be made to the Chief of Engineers for amendment of the directive.

(c) The Chief of Engineers has been delegated authority to approve for the Secretary of the Army leasehold acquisitions, including renewals and extensions, and space assignments from the General Services Administration, where the estimated annual rental for any single project is not in excess of $50,000 and the acquisition is not controversial, unusual, or inconsistent with Department of the Army policies, excepting the acquisition by lease of industrial and commercial facilities; projects requiring a certificate of necessity in accordance with the Act of Congress approved June 30, 1932, as amended (40 U.S.C. 278a); and space in the National Capital Region. This authority has been redelegated to the Division Engineer where the annual rental does not exceed $25,000.

(d) Authority to issue all Department of the Air Force Real Estate Directives is vested in the Real Property Division, Directorate of Engineering and Services, HQ, USAF. Major Air Commands and Air Force Regional Civil Engineers may issue Real Estate Directives for acquisitions not exceeding $50,000 in cost.

(1) Division Engineers will assign numbers to Real Estate Directives issued by Air Force Regional Civil Engineers. The numbers will be in a consecutive series for each Division and will be preceded by a symbol identifying the Division to which the directive is issued.

(2) All revisions to Real Estate Directives will be designated as amendments to the basic Real Estate Directive and will be appropriately numbered.

(3) Division Engineers will forward the original and one copy of each Directive, and each amendment thereto to HQDA (DAEN-REA-L) WASH DC 20314.

(4) Commanders of Major Air Commands will approve requests for leases, lease renewals, and space assignments from the General Services Administration, where the estimated cost of the project does not exceed $50,000 per annum, and subject to any necessary clearances, excepting, however, the leasehold acquisitions listed in AFR 87-1.

(e) Authority to issue DOE Real Estate Directives has been delegated by the General Manager to the Directors of Operating Divisions, DOE.

§ 644.28 Responsibility for acquisition.

HQDA (DAEN-REA-L) is responsible for acquiring real estate for the Departments of the Army (military) and Air Force. HQDA (DAEN-REA-P) is responsible for acquiring real estate for the Department of the Army (civil works), DOE, and other Federal agencies as required.

§ 644.29 Authority to proceed with acquisition.

(a) Upon receipt of the formal Real Estate Directive by the Chief of Engineers, with necessary clearances made and an allotment of funds to the District Engineer, the Division Engineer will be authorized to proceed with acquisition in accordance with the directive and the procedures outlined in Subpart C and Pub. L. 91-646 instructions. Where authority has been delegated, the Division or District Engineer may proceed with the acquisition upon receipt of proper directive, any necessary clearances, and allotment of funds.

(b) Under no circumstances will offers be made to landowners or construction initiated prior to the issuance of instructions from the Chief of Engineers to proceed with the acquisition.

(c) The Division or District Engineer will maintain liaison with the local commander and advise him when possession of the land is available.

§ 644.30 Preliminary real estate work.

(a) Preliminary real estate work is defined as that action taken with regard to the individual ownerships leading up to, but not including, solicitation of offers from landowners. It includes preparation or procurement of tract ownership data (ENG Form 900—Tract Ownership Data, where its use is considered desirable), legal descriptions and mapping, title evidence, and individual tract appraisals. At this stage of the acquisition program, it will be necessary to make some contact with landowners, tenants, or other interested persons; for example, the appraiser's discussion of the property with the owner, his agent, or other representative (Pub. L. 91-646, sec. 301(2)). In any such contacts, information should be confined to the fact that acquisition of the real property is being considered; no acquisition action can be taken until funds are made available; and, after acquisition is approved, as much advance notice as possible will be given to all interested parties. Supply of ENG Form 900 may be requisitioned from the OCE Publications Depot in the prescribed manner.

(b) Preliminary real estate work on Army projects will be conducted as soon as design has progressed to the point at which the exact land needed has been firmly determined, or as soon as the District Engineer has determined that it is practicable to proceed.

(c) Preliminary real estate work on Air Force projects will be conducted upon request of Headquarters, USAF, or Major Air Command installations, and at the request of any of those persons designated for industrial acquisitions.

Subpart B—Appraisal

§ 644.41 General.

(a) *Purpose.* (1) Subpart B describes the general procedures and standards governing all appraisal work undertaken in connection with the real estate responsibilities of the Corps of Engineers.

(2) These guidelines are to promote and encourage the utilization of uniform appraisal methods, standards, and techniques. Their use should result in the most effective solutions to the many appraisal problems with which the Corps of Engineers is confronted in the implementation of its real estate programs involving acquisition, disposal, and management of all kinds of real property. They are to encourage the appraiser to include in his appraisal process sufficient factual data and other supporting information to develop sound, unbiased, and independent market value estimates; promote appraisal reporting techniques that reflect acceptable judicial concepts, intelligent and convincing reasoning; and provide a sound basis for negotiations and valid testimony in court.

(b) *Applicability.* Provisions of this subpart are applicable to the Office of the Chief of Engineers and all field operating agencies having real estate responsibilities.

(c) *Procedures and Standards.* (1) In acquiring, disposing, and managing real estate, or any interest therein, it is the practice of the Department of the Army to impartially protect the interests of all concerned.

(2) The fair market value of the pertinent real estate interest in each parcel or tract of real property being acquired, disposed of or managed will be developed by a competent appraiser preparing an adequate appraisal report indicating sound estimates of values of each estate required. The appraisal may be prepared by either a staff employee or by a self-employed contract appraiser; however, each must have demonstrated the ability to exercise good judgment and must have had adequate experience in estimating the market value of the particular type of property involved. The qualifications and selection of staff appraisers will be based on the Civil Service Standards for the GS-1171 Series. A contract appraiser must also meet the experience requirements set forth in the Civil Service Standards.

(3) It is the practice of the Chief of Engineers to engage the services of competent appraisers and consultants to augment staff capabilities in the appraisal of various real estate interests to be acquired, disposed of or managed by the Corps. Preference will be given to local appraisers and consultants, if qualified, and the costs of their services will be paid by the Government. Any appraiser having an interest in the property being appraised or any relationship, family or business, to the owner thereof, will be disqualified from appraising that particular tract.

(4) Normally, only one appraisal per ownership or tract will be obtained. However, in cases involving controversial appraisal problems or precedent

setting patterns of value in first priority areas of large projects, more than one appraisal of the same property may be obtained if considered necessary by the Division or District Engineer. If negotiations with the owners have reached an impasse and it appears that the filing of condemnation proceedings will be necessary to acquire the land or interest therein, the joint Corps of Engineers-Department of Justice policy provides that in fee takings, where the value of the property is between $50,000 and $100,000 only one appraisal need be provided to the Department of Justice so long as it is a contract appraisal; two appraisals will be provided for values exceeding $100,000. In the filing of condemnation proceedings for easement takings in excess of $50,000 two appraisals will be required. At least one of the two appraisals must be made by a contract appraiser. More often than not, both will be by contract appraisers.

(5) Each appraisal report will be carefully reviewed and acted upon by a qualified reviewing appraiser.

(6) It is essential that negotiations for any required real estate interests be conducted on the basis of an approved appraisal that reflects current fair market value. Any appraisal report with an effective date of six months or more prior to initiation of negotiations with the landowner or the date of filing of a condemnation action is considered outdated and should be reviewed and brought up to date to reflect current market conditions.

(7) The appraiser may be called upon, in condemnation proceedings or otherwise, to establish the validity and competence of his estimates. He must familiarize himself with basic rules of trial evidence so that his testimony will be admissible and of probative value. Since, as a witness, he must be prepared to offer convincing testimony, his report should contain an analysis of all factual data upon which his estimates are based.

(8) Local representatives of the Department of Justice are available for consultation in matters pertaining to acquisitions and legal principles involved in valuation problems.

(9) Appraised valuations and the supporting appraisal reports, for acquisition or disposal purposes, are privileged information and the appraiser should not divulge his findings and opinions to anyone except authorized officials of the Government. Section 301(3), Pub. L. 91-646, January 2, 1971, dictates that written statement of, and summary of the basis for, the amount of the estimate of just compensation, shall be furnished the property owner. This does not mean that the appraisal report or any part of it should be given to the landowner, but only a summary of the amount and methods of appraisal.

(10) The appraiser is usually the first personal contact the owner has with a representative of the Government. The owner is generally the prime source of information pertaining to the history, condition, management, and operation of the property. It has always been the Corps' practice for the appraiser to contact and consult with the owner of a property prior to and during the inspection of the tract. Section 301(2), Pub. L. 91-646, January 2, 1971, dictates that "* * * the owner shall be given an opportunity to accompany the appraiser during his inspection of the property." Before the appraiser makes his first visit to the property, he must make every effort to contact the owner and invite him or his designated agent or representative to accompany him on his actual field inspection. If personal contact is not possible, a registered letter should be sent to the owner. The appraisal report should reflect when and how the owner or his representative was contacted, whether or not he accompanied the appraiser, and any other pertinent comments.

(d) *Definition of Market Value.* "Under established law the criterion for just compensation is the fair market value of the property at the time of the taking. 'Fair market value' is defined as the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would be sold by a knowledgeable owner willing but not obligated to sell to a knowledgeable purchaser who desired but is not obligated to buy. In ascertaining that figure, consideration should be given to all matters that might be brought forward and reasonably be given substantial weight in bargaining by persons of ordinary prudence, but no consideration whatever should be given to matters not affecting market value. The cash or on terms reasonably equivalent to cash, requirement is important and numerous courts have noted this factor." (Source: "Uniform Appraisal Standards For Federal Land Acquisitions," Interagency Land Acquisition Conference, Washington, D.C., 1973.) This definition is considered to be consistent with another definition approved by the American Institute of Real Estate Appraisers which sets out market value "as the highest price estimated in terms of money which a property will bring if exposed for sale in the open market, allowing a reasonable time to find a purchaser who buys with knowledge of all the uses to which it is adapted and for which it is capable of being used."

(e) *Use of Appraisal Procedures.* (1) The appraisal of real estate is the estimation of the fair market value of a specified interest in a particular ownership of property, and the appraisal profession has developed certain basic appraisal techniques and procedures. There are three approaches to value which have become standardized—the cost approach; the market approach; and the income approach.

(2) In the COST APPROACH, the appraiser estimates the cost of reproduction of the buildings and land improvements. A deduction is made for depreciation due to physical deterioration, and also for functional and economic obsolescence. The value of the land is then estimated by comparison with sales of similar unimproved tracts and added to the depreciated value of the improvements. This procedure is also referred to as the Summation Approach. This approach is always applicable in the valuation of publicly owned structures such as schools, fire houses, etc.

(3) In the MARKET APPROACH, the appraiser compares the subject property on an overall basis with similar properties which have recently sold. Adjustments are made for all factors of dissimilarity. All known sales are considered, but the appraiser selects only those which are verified to be good "arms length transactions" and considered to be most similar to the property appraised. After these sales are analyzed and adjusted to the subject, this data is then correlated into a final estimate of value as indicated by the market.

(4) In the INCOME APPROACH, the appraiser estimates the probable gross and net income to be expected from the rental of the property, adjusts for the quality and durability of this income stream, and processes this income into a value estimate by use of an appropriate capitalization rate.

(5) The appraiser then correlates the indicated value estimates from the three approaches into a final estimated market value. Consideration is given to the relative strengths and weaknesses of each approach. Normally, the most weight is given to the approach commonly used by the typical purchasers of the type of property appraised. In almost all routine appraisals the market approach is most applicable.

(f) *Importance of the Appraisal Function.* The measure of success or failure in any real estate transaction is inseparably bound up in the matter of price. The heart of the real estate business is the price estimate or appraisal. The importance of sound appraisals for the Department of the Army cannot be over-emphasized. The courts have established basic rules governing exercise of the power of eminent domain.

(g) *Appraisal is an "Estimate."* The market value of any real estate interest is not a matter of exact determination, and the appraiser does not "establish" or "determine" the value. An appraisal is an "estimate" of current value based upon and supported by an analysis of all the factors, physical, economic, and social which influence the present and future benefits to be derived from the ownership of the property appraised.

(h) *The Appraisal Format.* In order to establish a degree of uniformity throughout the Corps as to an appraisal format, all staff appraisers and contract appraisers will follow the outline as set forth in the "Uniform Appraisal Standards For Federal Land Acquisition" and § 644.42.

§ 644.42 Appraisal report.

(a) *Preface.* The appraisal report is an important document which serves as a material aid in the acquisition of required real estate interests. It is also an indispensable factor in justifying expenditures of public funds. It is essential that the report indicates conclusively that the appraiser has considered and analyzed all available data and used logical reasoning and judgment in developing his value conclusions.

(b) *Scope of Reports.* (1) It is the Corps' practice that all appraisal reports will be prepared in narrative form. The report will include, as a minimum, all essential data which will disclose the purpose, the scope of the problem and the principal techniques and approaches employed. The report should contain all the pertinent supporting data required to sustain the appraiser's final conclusion of market value.

(2) The use of preprinted narrative sales data sheets is authorized. Care should be exercised to properly relate each sale to subject in the narrative. Use of individual forms is also authorized for tabular exercises, such as the "cost approach." In every instance the narrative should reflect the appraiser's reasoning.

(c) *Narrative Report Format.* (1) The following report format is taken verbatim from "Uniform Appraisal Standards For Federal Land Acquisitions," published by the Interagency Land Acquisition Conference, 1973.

"B-1. Contents of appraisal report: The text of the appraisal report shall be divided into four parts as outlined below:

PART I—INTRODUCTION

1. TITLE PAGE. This shall include (a) the name and street address of the property, (b) the name of the individual making the report, and (c) the effective date of the appraisal.

2. TABLE OF CONTENTS.

3. LETTER OF TRANSMITTAL.

4. PHOTOGRAPHS. Pictures shall show at least the front elevation of the major improvements, plus any unusual features. There should also be views of the abutting properties on either side and that property directly opposite. When a large number of buildings are involved, including duplicates, one picture may be used for each type. Views of the best comparables should be included whenever possible. Except for the overall view, photographs may be bound as pages facing the discussion or description which the photographs concern. All graphic material shall include captions.

5. STATEMENT OF LIMITING CONDITIONS AND ASSUMPTIONS.

6. REFERENCES. If preferred, may be shown with applicable approach.

PART II—FACTUAL DATA

7. PURPOSE OF THE APPRAISAL. This shall include the reason for the appraisal, and a definition of all values required, and property rights appraised.

8. LEGAL DESCRIPTION. This description shall be so complete as to properly identify the property appraised. If lengthy, it should be referenced and included in Part IV. If furnished by the Government and would require lengthy reproduction, incorporate by reference only.

9. AREA, CITY AND NEIGHBORHOOD DATA. This data (mostly social and economic) should be kept to a minimum and should include only such information as directly affects the appraised property together with the appraiser's conclusions as to significant trends.

10. PROPERTY DATA:

a. Site. Describe the soil, topography, mineral deposits, easements, etc. A statement must be made concerning the existence or nonexistence of mineral deposits having a commercial value. In case of a partial taking, discuss access both before and after to remaining tract. Also discuss the detrimental and hazardous factors inherent in the location of the property.

b. Improvements. This description may be by narrative or schedule form and shall include dimensions, cubic and/or square foot measurements, and where appropriate, a statement of the method of measurement used in determining rentable areas such as full floor, multitenancy, etc.

c. Equipment. This shall be described by narrative or schedule form and shall include all items of equipment, including a statement of the type and purpose of the equipment and its state of cannibalization. The current physical condition and relative use and obsolescence shall be stated for each item or group appraised, and, whenever applicable, the repair or replacement requirements to bring the property to usable condition.

Any related personalty or equipment, such as tenant trade fixtures, which are not attached or considered part of the realty, shall be separately inventoried. Where applicable, these detachable or individually owned items shall be separately valued.

d. History. State briefly the purpose for which the improvements were designed, dates of original construction and/or additions; include, for privately owned property, a ten-year record as to each parcel, of all sales and, if possible, offers to buy or sell, and recent lease(s); if no sale in the past ten years, include a report of the last sale.

e. Assessed value and annual tax load. If the property is not taxed, the appraiser shall estimate the assessment in case it is placed upon the tax roll, state the rate, and give the dollar amount of the tax estimate.

f. Zoning. Describe the zoning for subject and comparable properties (where Government owned, state what the zoning probably will be under private ownership), and if rezoning is imminent, discuss further under item 11.

PART III—ANALYSES AND CONCLUSIONS

11. ANALYSIS OF HIGHEST AND BEST USE. The report shall state the highest and best use that can be made of the property (land and improvements and where applicable, machinery and equipment) for which there is a current market. The valuation shall be based on this use.

12. LAND VALUE. The appraiser's opinion of the value of the land shall be supported by confirmed sales of comparable, or nearly comparable lands having like optimum uses. Differences shall be weighed and explained to show how they indicate the value of the land being appraised.

13. VALUE ESTIMATE BY COMPARATIVE (MARKET) APPROACH. All comparable sales used shall be confirmed by the buyer, seller, broker, or other person having knowledge of the price, terms and conditions of sale. Each comparable shall be weighed and explained in relation to the subject property to indicate the reasoning behind the appraiser's final value estimate from this approach.

14. VALUE ESTIMATE BY COST APPROACH, IF APPLICABLE. This section shall be in the form of computative data, arranged in sequence, beginning with reproduction or replacement cost, and shall state the source (book and page if a national service) of all figures used. The dollar amounts of physical deterioration and functional and economic obsolescence, or the omission of same, shall be explained in narrative form. This procedure may be omitted on improvements, both real and personal, for which only a salvage or scrap value is estimated.

15. VALUE ESTIMATE BY INCOME APPROACH, IF APPLICABLE. This shall include adequate factual data to support each figure and factor used and shall be arranged in detailed form to show at least (a) estimated gross economic rent or income; (b) allowance for vacancy and credit losses; (c) an itemized estimate of total expenses including reserves for replacements.

Capitalization of net income shall be at the rate prevailing for this type of property and location. The capitalization technique, method and rate used shall be explained in narrative form supported by a statement of sources of rates and factors.

16. INTERPRETATION AND CORRELATION OF ESTIMATES. The appraiser shall interpret the foregoing estimates and shall state his reasons why one or more of the conclusions reached in items (13), (14), and (15) are indicative of the market value of the property.

17. CERTIFICATION. This shall include statement that Contractor has no undisclosed interest in property, that he has personally inspected the premises, date and amount of value estimate, etc.

PART IV—EXHIBITS AND ADDENDA

18. LOCATION MAP. (Within the city or area)

19. COMPARATIVE MAP DATA. Show geographic location of the appraised property and the comparative parcels analyzed.

20. DETAIL OF THE COMPARATIVE DATA.

21. PLOT PLAN.

22. FLOOR PLANS. (When needed to explain the value estimate.)

23. OTHER PERTINENT EXHIBITS.

24. QUALIFICATIONS. (Of all Appraisers and/or Technicians contributing to the report.)"

(2) The following exceptions are made to the above format:

(i) Estate, either a copy of the estate appraised should be included in the report or by reference in the report to the appropriate estate.

(ii) Legal description must be included in the appraisal report, either in the body or as an exhibit.

(3) Photographs of important buildings and unusual land conditions are considered an integral part of each appraisal report. Judgment should be exercised in conserving time and expense, and several small buildings can often be covered in one photograph. The use of color film and photographs is encouraged, especially wherein development cost either "in-house" or by outside firms is reasonable.

(d) *Brief Appraisals.* (1) Brief narrative appraisal reports, of a one-to-four page composition, are authorized for use in many instances wherein the evaluation or per annum rental value does not exceed $3,600. The use of this type of report is encouraged and authorized for:

(i) Family housing appraisals, (ii) inleasing of privately-owned quarters and outleasing of government-owned quarters to civilian tenants, (iii) the purchasing or leasing of undeveloped land, (iv) rentals of small office-type space (example: Recruiting facilities), (v) rights of way for utility lines and roadways, (vi) leases; easements, and (vii) other minor interests in real property.

(2) Appraisals exceeding $2,000 per annum rental are subject to the Economy Act, and the fee value must be shown if improvements are included. A brief or short form-type of appraisal is adequate.

(3) All appraisals will be supported by at least three comparable sales or rentals of similar properties. A narrative discussion of each will be included. In bulk acquisition projects the use of prepared sales data sheets is authorized and encouraged. Each sale or rental must be discussed and compared to the subject property within the narrative of the report.

(4) Brief narrative appraisals will be reviewed under the same requirements as normal appraisal reports.

§ 644.43 Gross appraisals.

(a) *Preparation.* (1) The gross appraisal sections of real estate design memoranda and planning reports are subject to minute scrutiny by higher authority in the Department of Defense and by Congressional Committees. It is essential that they be meticulously prepared to reflect actual market conditions and unit prices.

(2) Each gross appraisal will be supported by detailed analyses of an adequate number of typical comparable sales. Each index sale will be analyzed to show various land classifications and values, building contribution estimates and other relevant information. The sales prices should be verified by someone having knowledge of the transaction.

(3) Where letter-type or brief real estate design memoranda on civil works projects are submitted, comparable sales data will be presented in one of the following methods:

(i) Be submitted within the report in a brief manner, with at least three truly comparable sales discussed in narrative form and comparisons shown to the subject lands covered by the memorandum.

(ii) Be referenced to the last real estate design memorandum issued on the same project and if values have changed in the interim, additional sales data submitted to support the changes. If the last design memorandum is over a year old, new supporting data must be submitted.

§ 644.44 Fee appraisals.

(a) *Definitions and Procedures.* (1) The complete and unrestricted ownership of all the rights to the full use and enjoyment of a parcel of real estate is called the "fee simple estate." An appraisal of this interest is referred to as "Fee Value."

(2) Most fee appraisals require the use of all three of the standard appraisal approaches.

(b) *Applicability.* Appraisals of the fair market value of the free and clear fee title to the subject property is necessary in the greatest majority of the Corps of Engineers' real estate responsibilities be it acquisition (full or partial), disposal, inleasing, outleasing, rentals, etc. In almost every case the monetary value of the required estate and interest is based on the fee value of the property; therefore, the Corps' greatest appraisal requirement is for fee appraisals.

(c) *Approaches.* (1) It is recommended that whenever possible all three of the standard appraisal approaches, Cost-Market-Income, be used in a fee appraisal. However, if due to the type of property, is is not practical, beneficial, or necessary to use a particular approach, the appraiser is required to indicate in his report that consideration was given to its use and discuss why it was not used.

(2) In the Cost Approach it is extremely important that the appraiser document all items of costs for development, construction, utilities, etc. It also is extremely important that he fully consider all forms of depreciation such as physical deterioration, functional obsolescence, economic obsoles-

cence, etc., and justify his methods and factors used in developing his depreciation factors.

(3) The Market Approach or Comparative method of appraisal is the most direct approach to a market value estimate and is preferred above all others. It is basically an application of the principle of substitution wherein the sales of similar type properties are analyzed to develop a price at which an equally desirable and similar property can be obtained. It involves the collection and analyzing of current sales of comparable properties and comparing these sales to the subject property. Since no two properties are identical, the appraiser must make adjustments for differences between the two. Adjustments may be by a dollar amount (per unit, per acre, or lump sum) or on a percentage basis. Full support and justification must be given for each amount. Adjustments may be shown either by a tabular analysis or by a narrative discussion.

(4) The market value of an income-producing property is quite often governed by the net income it will produce. The fair market value may be estimated by developing the expected net income and processing it into a value estimate by use of an appropriate capitalization rate. The keynote of this approach lies in the sound development of a proper rate. The appraiser must have a basic knowledge of the principle and techniques involved and must be certain that he has adequate data to develop this rate and properly process the income into a fair market value.

(5) It is most important that the valuation estimates developed by all of the approaches used are correlated into one conclusive value. In those cases where there is a substantial spread among values, the appraiser is cautioned to recheck all his data and figures for accuracy. The cost figures and depreciation factors should be checked in the Cost Approach; the sales data should be further documented and analyzed in the Market Approach; and the Income Method may require a recheck of the soundness of the capitalization rate.

(d) *Partial Takings.* (1) A substantial number of acquisitions require only portions of an ownership necessitating a "partial taking." In these cases the appraiser is required to estimate the value of the whole ownership before the taking; the value of the remainder—the difference being the value of the part taken. Many times the remainder is of less value after the taking, indicating a "severance damage." The appraiser is usually required to allocate the total taking value between the value of the part acquired and the severance damage to the remainder by reason of the taking.

(2) In order to promote uniformity in the reporting format, the following example of the "before" and "after" method is presented for guidance:

A 220-acre parcel of land is to be acquired from a 420-acre farm:	
Value "before" the taking ($300 p/ac)	$126,000
Value of remainder "after" taking ($200 p/ac)	40,000
Total Value of part taken, including severance damage to remainder	$86,000
Value of 220 acres taken ($300 p/ac)	66,000
Severance Damage to Remainder	$20,000

(3) The appraisal of the property before the taking must be a complete narrative-type appraisal containing adequate market data to support the total value. The report then must also include a full appraisal on the remainder portion of the property consisting of a full description of the residue immediately after the taking and a complete set of market data and sales other than those used in the "before" evaluation. If the remainder parcel has diminished in value as a result of the taking, the appraiser must have adequate support and justification for the reduction in value.

(4) In the case of partial takings, consideration must also be given to offsetting benefits applicable to the remaining property. A combination of legal interpretation of the law and judicial decisions with regard to such benefits must be used in determining whether offsetting benefits are applicable. Reference is made to paragraph A-9 and A-10 in the "Uniform Appraisal Standards For Federal Land Acquisitions."

(5) Paragraph A-13 of the "Uniform Appraisal Standards" is also refer-

enced in connection with guidance regarding "navigation servitude."

(e) *Appraisal Certificate.* (1) No appraisal report will be considered acceptable without appropriate certification by the appraiser responsible for the contents of the report and the conclusion of values. The certification can be in the front or the back of the report, consistent with Division or District policy.

(2) An appropriate certification shall be substantially in accordance with the following: I certify that I have carefully examined the property described herein and that the estimates as developed in the report represent my unbiased opinion and judgment. I further certify that I have no interest, past, present or prospective, in the subject property which would affect my opinion and that the present fair market value of the (*insert estate appraisal*) is subject only to all the assumptions and limitations as specifically set forth. (Date and signature of appraiser.)

§ 644.45 Rental value.

(a) *Definition.* (1) The fair rental value of the property is the amount which, in a competitive market, a well-informed and willing lessee would pay and which a well-informed and willing lessor would accept for the temporary use and enjoyment of the property.

(2) Appraisals to establish fair rental values will be made in accordance with acceptable standards of appraisal applicable to the particular type of property and in accordance with general appraisal practices and procedures heretofore described in relating to all appraisal work. The preparation of time-consuming and lengthy appraisal reports should be kept to a minimum, particularly with regard to rental properties of low value. A brief summary of the essential facts will be sufficient to support leases by the Government of building space or unimproved land where the net rental value is not in excess of $3,600 per annum.

(b) *Applicability.* All provisions of this subpart are applicable to "inleasing" of real property for use of the Government, and equally applicable to "outleasing" of Government-owned real property. Section 644.45(l) Government Quarters, is normally applicable only to "outleasing" of quarters to civilian employees. The provisions are, however, also considered valid considerations in appraising "inleases," wherein privately-owned housing is being rented for occupancy by military personnel in lieu of quarters allowances.

(c) *Services.* In the absence of an agreement or contract, a lessor is not bound to furnish any utilities or building services of any kind, and such services may not be acquired under the power of eminent domain. It is, therefore, necessary for the appraiser to include in his report as separate items the estimated cost of all customary services that may be required to permit the normal use and occupancy of the property.

(d) *Market Value of Fee.* (1) Where temporary use of an entire building or other independent unit of an ownership is proposed, the appraisal will ordinarily report both the market value of the fee title and the fair annual rental value. However, no appraisal of fair market value of fee title is required in any case where assessed value, supported by statement of the assessor and ENG Form 869-R (15% Valuation Certificate), can be used for compliance with existing law, Section 322 of the Act of June 30, 1932 (40 U.S.C. 278a), known as the "Economy Act." Fee value is not required for land only leases, as the Economy Act is not applicable.

(2) An exception to the above procedure is in regard to the appraisal of family housing units. As an alternative, the appraiser can support his rental valuation by use of comparable rentals and a statement that the lease value does not exceed 15% of the fair market value.

(e) *Lease of Minor Portions of Buildings.* Where appraisals are required to establish rental value of a minor portion of a building, it will not be necessary to estimate the fee value of the entire property, provided that the net annual rental does not exceed $2,000. A sound rental value can ordinarily be estimated by comparison with established rentals in subject property and in adjacent similar properties in the community. However, care should be exercised to insure the reasonableness of the reported comparable rental values. The appraiser's report must include sufficient data on these current rentals to support adequately the rental estimate for the subject space.

(f) *Unexpired Lease.* Where the premises to be acquired are occupied by tenants under leases which cannot be terminated at will by the landlord, the appraiser's report will set forth in detail the terms of the existing leases and will show the value of the tenant's interest. The value of the tenant's interest is based on the fair rental value (economic rent) of the part of the property occupied by the tenant for the unexpired term of the lease, or for the term condemned, whichever is shorter, less the rent which the tenant is obligated to pay (contract rent) under the existing lease. The difference between the economic and contract rent is known as "bonus rent."

(g) *Bonus Value.* Wherein a "bonus rent" is reflected as being the difference between economic and contract rent, a full narrative discussion will be included in the report. It is of paramount importance that the present economic rental be supported by the rental market data. The "bonus value" is the present worth of the discounted bonus rent.

(h) *Rental Appraisal Report.* The appraisal report will contain adequate facts and discussions relative to the following:

(1) Land description, showing street frontages and lot depths.

(2) Adequate description of improvements and furnishings, including type of construction, total floor space, floor load for storage space, number of rentable rooms, or income-producing space, nonproductive or public space, total cubic content, and reproduction cost of improvements less depreciation.

(3) Assessed valuation and lawful ratio to market value, if the annual rental value exceeds $2,000.

(4) Analysis and discussions of current rentals of similar properties and rental history of the property appraised.

(5) Discussion of the appraisal process and rental rates applicable to the terms of the proposed lease, particularly as to any differential in the rate of return applicable to customary long term rentals.

(6) Statement showing distribution of appraised annual rental as allocated to fixed charges and fair rate of return on land, buildings, and any furnishings or equipment that are included in the proposed taking.

(i) *Special Purpose Properties.* Appraisals to estimate the rental value of hotels, clubs, hospitals, and other highly specialized properties will include full information on the income capacity of the property under average competent management and under accepted standards of operation for the particular type of property involved. The appraisal reports will, among other things, contain an analysis and discussion of the following items:

(1) Financial history of property, including indebtedness, the actual past income or earnings of the property based upon audit reports for the past five years or longer, and any unaudited current months of the fiscal year. In the absence of audits, corporate statements may be furnished if properly certified.

(2) Discussion of the past operation and management methods with comments relative to any excessive or insufficient charges appearing in the financial statements obtained.

(3) Appraiser's estimate of the stabilized income of the property.

(4) Appraiser's estimate of profits available for typical lessee-operator.

(5) Recommendations of the appraiser as to the relative merits of acquiring fee title to the property as against acquiring a leasehold interest.

(j) *Farms and Rural Properties.* Appraisals to estimate the rental value of farms and other types of rural properties will report the present market value of the fee title, the fair annual rental value, and any direct damage to growing crops, standing timber, or improvements to be removed or destroyed. The damage will be reported separately from the rental value in order to permit the reflection of the damage in the primary rental term.

(k) *Industrial Installations.* (1) Appraisal reports will be obtained to support all leases of industrial installations or portions thereof. It is important that appraisals of operating industrial installations be prepared by specially qualified appraisers or consultants intimately familiar with the particular processes and production capabilities and related factors having any bearing on the value of a particular plant.

(2) The appraisers selected to estimate the rental value should be fully informed as to all known prospective lessees and the amount of any bids, or offers made for the use of the property, and as to all terms, conditions, and limitations under which the property will be made available for use or operation.

(3) The appraisal reports will include a detailed inventory setting forth all physical factors pertaining to the land, buildings, machinery, and equipment and an adequate discussion of all local factors influencing the profitable use of the facility. Data pertinent to the prevailing rentals for other Government and privately-owned industrial plants and warehouses considered reasonably similar to the facilities to be leased will also be included. The conclusions of the appraiser as to other matters of importance to the Department of the Army in its leasing operations will likewise be presented. The appraiser should bear in mind that idle manufacturing plants, and all industrial properties, as a general rule, are valuable only to the extent and degree that they are usable in actual production. It is also a generally accepted economic fact that the plant and fixed equipment (real estate) is the production factor for which a return can ordinarily be realized after the cost of all other factors in production has been provided. Military necessity has required the construction of many plants which are designed for special purposes and which may tend to defeat the ordinary approaches to the market rental value problem. In the absence of comparable rentals of similar properties or other reliable comparative guides to value for temporary use, market rental value should be estimated with particular consideration to the following methods:

(i) *Reasonable Return on Estimated Fair Value.* For this purpose "fair value" is defined as the prudent cost of reproduction less depreciation of only that portion of the property that is readily adaptable or capable of competition with alternative properties which may be available to or constructed by the proposed lessees. Items of equipment and any portions of a plant that do not directly contribute to the specific use may be eliminated from consideration and the rental return estimated only on items and space actually adaptable for use in the proposed enterprise. The appraiser is particularly concerned with any competitive disadvantages or penalties accruing to subject property by comparison with the alternatives available to prospective users. The rental estimate should therefore be appropriately modified with respect to adequate allowances for amortization of necessary alterations to be made by the lessee. Other operating disadvantages that might tend, from the competitive viewpoint, to result in increased operating cost or other penalties that might in any way be brought forward in negotiations to establish an acceptable rental price must also be considered.

(ii) *Ratio of Plant Costs to Productive Capacity.* In many lines of industrial enterprise, it may be possible to obtain comparable operating experience ratios with reference to relation of average annual real estate costs or plant investment charges to the gross annual production. The difficulties of estimating production levels and obtaining sufficiently accurate data as to actual operating experience are fully appreciated. Suggested sources of such information are annual statements of prospective lessees and their competitors. It is believed that this approach to the appraisal problem is fundamentally sound, particularly so when there is an indicated demand for the full capacity of an industrial plant as originally designed, and that this method will serve as a reasonable check and balance against return on "fair value." It should also be very helpful as a guide to the rate of capitalization in the "fair value" approach to the rental problem.

(iii) *Taxes.* The appraisal will not be influenced by the fact that the Government is not presently required to pay taxes on the property.

(iv) *Savings.* When appropriate, the estimated savings in maintenance, protection, repair and restoration, if any, will be obtained by the Management and Disposal Branch from the using service or other competent authority and furnished to the appraiser preparing the appraisal report.

(l) *Government Quarters.* (1) Rental schedules for Government quarters furnished to civilian employees will be supported by written appraisal reports reflecting adequate coverage of the following items:

(i) *Construction Details.* Physical description of quarters will include the general grade of construction work, materials and decorations, number of rooms, floor space, porches, garages, general appearance and condition.

(ii) *Equipment and Accessories:*

Refrigeration
Cooking facilities
Kitchen cabinets
Closet space
Built-in conveniences
Screening
Elevators
Telephone service
Utilities
Plumbing

(iii) *Furniture and Furnishings.*

(iv) *Site Conditions:*

Lot size
Lot size per living unit
Access (street and road frontage)
Restrictions
Land improvements (walks, driveways, shrubbery, lawns, topography, etc.)
Hazards and/or amenities

(v) *Neighborhood Development and Data:*

Local zoning regulation
Public transportation
Schools
Shopping facilities
Recreational facilities
Supply and demand for housing
Population statistics
General trends

(vi) *Comparable Rental Data.* Data will include results of a comprehensive survey of current rental rates applicable to the most similar privately-owned housing in the nearest competitive or comparable neighborhood or community. Typical rental rates will be compiled, analyzed and tabulated, and subject properties identified and described in the same manner as prescribed above for Government quarters. The appraisal report should include a vicinity map showing location of rental units listed for comparison in relation to the location of the quarters being appraised.

(vii) *Comparative Relationships.* The appraisal report will include a discussion of relative merits of Government quarters by comparison with private housing units. Rental rates of housing controlled by governmental agencies or subsidized by private industry will not be used as a basis for comparison.

(viii) *Correlation of Rental Units.* A discussion of basic reasoning supporting the final rental value unit for each distinctive rental bracket is imperative.

(ix) *Photographs.* Photographs of typical views of the quarters appraised and typical private housing units cited as comparable rentals will be included in each report.

(x) *Appraisal Certificate.* Rental appraisal reports will not be considered acceptable without appropriate certification substantially in accordance with: "I certify that the above rental values represent my unbiased opinion of the present fair market rental value of the quarters described. I am not now a tenant residing in such quarters nor do I have any intention of becoming a tenant therein."

(2) Reappraisals of rental quarters are required every fifth year subsequent to previous appraisal. Rental rates will be adjusted annually between appraisals by application of the Consumer Price Index (CPI) maintained by the Bureau of Labor Statistics, Department of Labor, and as further required in accordance with Transmittal Memorandum No. 2, OMB Circular A-45, revised October 30, 1974.

§ 644.46 Easements.

(a) *Definition.* An easement is a property right of specified use and enjoyment falling short of fee ownership. It follows that the value of an easement is less than the market value of fee title to the same portion of property (exclusive of severance damages to residual portions).

(b) *Measure of Value.* The measure of compensation for an easement is the amount by which market value [illegible] the ownership is diminished by the imposition of the easement. This should be developed by use of the "before" and "after" method of appraisal, the difference being the value of the taking.

(c) *Flowage Easements.* (1) The appraisal of flowage easements will not be undertaken until flood frequency surveys have been completed and approved by proper authority. The flood frequency data will be made available to the appraisers with the definite understanding that it is to be accepted as one of the controlling factors in estimating the market value of the easements. The appraiser's certificate should be qualified to include the assumption that the frequency data is correct and that he has no responsibility therefore.

(2) The market value of fee simple title to each property over which a flowage easement is required will first be appraised in the usual manner. This estimate will be followed by appraisal of the market value of the property after imposition of the easement. The market value of the easement is then computed on the basis of the amount the market value of fee title is reduced by imposition of the easement. The appraiser will give full consideration to all factors having a bearing on the reduction in value of the parcel on which the easement is to be imposed. Each appraisal report will include complete information as to estimated flood frequency pertaining to each parcel appraised.

(3) The appraiser's major problem in appraising tracts having considerable value is the development of his value estimate after the imposition of the easement. The market data approach to value is limited in this phase of the appraisal to index sales of land reflecting the "use adaptability" of lands to a less profitable purpose. Typical of such change in highest and best use are the conversion of row crop land and orchard land to pasture and forestry. Likewise, the cost approach to value is applicable only to land improvements and structures to be removed or destroyed. It is, therefore, considered essential that flowage easement appraisals reflect, in adequate detail, changes in utility by the development and use of the earnings approach to value before and after imposition in all cases involving lands capable of producing income. The ratios thus developed in "before" and "after" values for income producing lands should prove to be helpful in developing appropriate ratios for nonproductive lands.

(4) In those instances where the type of land, topography, flood frequency and duration data clearly indicate that a minimal change in value (not to exceed $100) will result from exercise of the required rights, a brief appraisal is authorized. The appraisal report will contain as a minimum a complete statement of pertinent facts, including information regarding flood frequency and duration data pertaining to the property appraised. In the event condemnation is required to acquire the necessary rights, an acceptable "before" and "after" appraisal will be prepared prior to the institution of condemnation proceedings.

(5) A tract map showing each contour level of varying flood frequency will be made a part of each appraisal report. This map should facilitate review of the appraisals and serve as an aid to the negotiator in his contacts.

(d) *Other Easements.* It is recognized that many other types of easements, i.e., road, pipeline, restrictive, borrow, transmission line, flight, spoil, etc. are to be appraised. In all instances, the measure of value is still the same, the amount by which the market value of the ownership is diminished by the imposition.

§ 644.47 Appraisal of other interests.

(a) *Minerals.* (1) In all cases, the value of the subsurface will be included or accounted for in the appraisal report in such manner that negotiations may be readily conducted to acquire or extinguish subsurface rights if they are outstanding in third parties or if it develops that the vendors desire to reserve them. In those instances where minerals are held separately in large blocks underlying several individual surface tracts, a statement to this effect should be included and the plan for appraising the mineral estate identified. Unless the person who is appraising the surface has had training and experience in appraising minerals, the subsurface appraisal should be made separately by an appraiser qualified to perform this service. Since the removal of certain minerals may destroy the usefulness of the surface, care should be exercised to avoid duplication of value.

(2) In the event that subsurface valuation is unfamiliar to the Division or District requiring same, HQDA (DAEN-REE) WASH DC 20314 should be contacted for advice and recommendations. Mineral valuation engineers within the Corps may be utilized on a cost reimburseable basis for furnishing gross or tract appraisals.

(b) *Timber.* (1) Where the land being appraised has only young trees or timber not of merchantable size, the value thereof will be included with the value of the land. If the timber is of merchantable size, a timber cruise will be made by a professional forester and the timber classified in the appraisal according to species, type, range of size, quantity, unit value, and total value. A discussion of logging, haulage, and market conditions will be given. The total value of timber shall be the amount by which the timber enhances the market value of the bare land.

(2) Extreme care must be exercised in the use of separate timber estimates for appraising timber land, so as to avoid "doubling up." Where a timber cruise or estimate is used, comparable sales of recently timbered land should be used to support the remaining land value. Where such sales are not available, care must be utilized to extract the timber value from sales of timber land. The optimum situation would be to have sales that were also cruised; however, this does not often happen.

(c) *Growing Crops.* (1) Crop appraisals will not ordinarliy be necessary except in those cases where the Division or District has determined that possession of the cropland is necessary prior to the normal harvest period. Where the Division or District Engineer has determined that the landowner or his tenant cannot be permitted to harvest the crops, they will be appraised as separate property items.

(2) The crop appraisal will identify the crops by type, number of acres, estimated yield per acre taking into account all hazards, the unit value, gross market value at maturity based upon current local prices for the commodities less cost of bringing to maturity, harvest, and delivering to available markets. The expected harvest period will be reported, together with other pertinent information, in order to indicate an approximate date when the cropland may be available for construction purposes.

(d) *Use of Government-owned Property.* (1) An appraisal will be made, when required, to justify the consideration reserved in all leases, licenses and easements, except those specifically mentioned in paragraph (d)(3) of this section. The appraisal will be made in accordance with acceptable standards applicable to the particular type of property and the use to be made thereof in the proposed grant, and in accordance with the general appraisal practices and standards heretofore outlined in this chapter. Ordinarily the appraisals of property involving substantial improvements will include, in addition to complete coverage of all factors influencing the use of the property appraised, complete information as to the following:

(i) Data of acquisition and completion of Government construction.

(ii) Complete cost data as to original purchase price and Government construction.

(iii) Detailed discussion of the predominant uses to which the property is adaptable.

(iv) Competitive position of the property with respect to availability of privately-owned properties for similar use.

(v) Estimate of market value of fee title.

(vi) Estimate of annual rental value assuming unrestricted use over a reasonable period of time.

(vii) Estimate of annual rental value under proposed Government restrictions.

(2) Time consuming and lengthy appraisal reports should be avoided in the case of low value grants involving Government-owned property. The consideration in such cases may be substantiated by a simplified appraisal report by a qualified appraiser setting forth only such facts as are required to validate his conclusions as to value. In such instances, a physical inspection of the property may be waived where the appraiser is sufficiently familiar with the property under appraisals and local market conditions to prepare a reasonable value estimate of the estate to be appraised. When a property is not physically inspected, it will be so noted in the appraisal report. The decision concerning the necessity for a physical inspection of the property and analyzing local market conditions will rest with the appraiser signing the appraisal certificate since he is personally responsible for the value conclusion developed in the appraisal report. A low value grant for the purpose of this paragraph is defined as any grant for which the fair market rental value (before applying any offset in rental for estimated savings in maintenance, protection, repair and restoration) does not exceed the following:

Easement—$500 for the term.
Lease or License—$500 per annum if granted for not more than a five-year period and is granted after advertising.

(3) The following are exempt from the above requirements:

(i) Leases for land on which to construct new credit union facilities, under long-term leases. See DOD Directive No. 1000.10 for formula.

(ii) Concession leases under Graduated Rental System.

§ 644.48 Review and approval.

(a) *Procedure.* (1) Upon completion of an appraisal, the signed report is to be reviewed by a reviewing appraiser to assure that the information and data developed by the appraiser substantiates the estimated valuation. The review function also serves as a means of resolving differences that might be found in two or more individual appraisals of a single property. The reviewing appraiser is also responsible for maintaining consistency in appraisals for the various properties in a project.

(2) A review of all real estate appraisals is considered of vital importance to the successful operation of the real estate mission of the Corps of Engineers. It is essential that each and every appraisal be given an independent review and check by a thoroughly qualified reviewing appraiser. This will insure that the appraisal represents relative concurrence as to value of not less than two real estate appraisers professionally qualified by previous experience in appraising the particular type of property involved. The reviewing appraiser should familiarize himself with the property to the extent that he can adequately present and support his opinion when called upon to do so.

(3) The review action will be documented by a separate narrative memorandum signed and dated by the authorized reviewing appraiser. Such review memorandum will indicate, but not be limited to, the following:

(i) Date and nature of physical inspection of the subject property.

(ii) Statement relative to reviewer's knowledge of comparable sales used.

(iii) Reviewer's opinion as to the appraiser's valuation.

(iv) Other pertinent data, if any, relative to the property or comparable sales that the reviewer feels would lend additional credence to value estimate.

(v) Reviewer's certification of approval, disapproval, or recommendation.

(4) If more than one appraisal is obtained for an ownership, all should be reviewed by the same reviewing appraiser. The reviewer can cover all appraisals in one review memorandum, or write individual reviews.

(5) No alterations or additions will be made to a signed appraisal report by anyone other than the appraiser who signed the report. A reviewer cannot change the value reflected or approve an amount other than the appraiser's final conclusion of value. His alternative is disapproval.

(6) A reviewing appraiser may not review other appraisal reports covering a property that he has himself previously appraised. In this instance

the reports must be assigned to another reviewer or be forwarded to the next level of review for appropriate action.

(7) Appraisal reports obtained by the Department of Justice and submitted for Corps review are to be treated in the same manner as those obtained by the Corps.

(b) *Delegation.* (1) Division Engineers have been authorized to approve or take action as appropriate on all real estate appraisal reports made for the purpose of purchase, disposal, or any use of real property in which the estimated fair market value (of the part to be acquired, if a partial taking) does not exceed $250,000, or the estimated fair market rental value does not exceed $150,000 per annum.

(2) Division Engineers have been authorized further, at their discretion, to redelegate any part of this authority, up to $150,000, to District Engineers.

(3) All appraisals exceeding $250,000 will be forwarded to HQDA (DAEN-REE) WASH DC 20314 for final review, approval, and/or appropriate action. Each report will be thoroughly reviewed at all levels, including the Project, District and Division.

(4) A copy of all those reports between $100,000 and $250,000 will be forwarded to DAEN-REE for post review and retention.

(5) In addition to those reports which exceed the delegated authority, DAEN-REE will review and take appropriate action on complex, difficult and controversial appraisals. Where more than one appraisal has been made within either of these categories, a copy of each appraisal report should be submitted for review regardless of variances in opinions of value. At times, the Division Engineers may receive specific instructions as to appraisals which may require final approval of DAEN-REE. Also, from time to time, DAEN-REE may call for and review typical appraisals prepared by individual appraisers.

(c) *Reconciliation of Appraisal Reports.* In the event that a reviewing appraiser does not agree with the value conclusion of the appraiser, the following steps should be taken:

(1) Attempt to reconcile differences with the appriser in a face-to-face meeting. The reviewing appraiser should present his additional evidence of value to the appraiser and discuss the report weaknesses, if any.

(2) In the event reconciliation and approval are not possible, the reviewer must then forward the report and review certificate to higher authority for resolution and request that another appraisal be obtained.

(d) *Qualifications of Reviewing Appraisers.* (1) A reviewing appraiser should have a minimum of five years experience in the field of real estate appraising. He should also have taken and successfully completed two or more appraisal courses offered by professional appraisal organizations. His experience record should indicate that he has thorough knowledge of all the standard appraisal techniques and approaches and has the ability to analyze the market and all pertinent data which affects value.

(2) Upon selection and appointment by the District Engineer of qualified staff personnel to act as reviewing appraisers, a copy of their qualifications and experience records, along with a copy of the appointing orders, will be forwarded to HQDA (DAEN-REE) WASH DC 20314.

(e) *Code of Ethics.* Under no circumstances will an appraiser be directed to make an appraisal at any predetermined amount or to change his opinion of value on any property appraised. It is recognized that the review function will develop some differences of opinion. However, where those differences cannot be resolved on a higher ethical basis, predicated upon sound reasoning and adequate data properly analyzed and applied, an additional appraisal will be obtained.

§ 644.49 Contracts.

(a) *Appraisal Reports.* (1) Within their contract authority, Division and District Engineers may contract with recognized appraisal firms, corporations and individuals for necessary appraisal reports on a lump sum basis. Following the award of any appraisal contract in excess of $5,000 a copy of such contract will be forwarded by the issuing office direct to HQDA (DAEN-

REE) WASH DC 20314, immediately upon execution.

(2) Requests from Division and District Engineers to the Chief of Engineers for names of appraisers qualified to make particularly complex appraisals are invited.

(3) Division and District Engineers will develop and maintain current lists of qualified appraisal firms, corporations and individuals, from which contractor selection will be made. These lists should be appropriately grouped or rated in accordance with special qualifications and experience in connection with various and specific types of appraisal problems.

(4) Prior to receipt of proposals and negotiations with appraisers, a target fee (Government estimate) will be developed with due consideration to the relative skill and ability required in solving the appraisal problem and the appraiser's time and expense required for preparing the desired reports.

(5) In the negotiation of appraisal contracts the following items are to be considered:

(i) The appraisal of real estate is a recognized profession governed by a code of ethics prohibiting competition in obtaining appraisal assignments. All negotiations for proposals will be conducted on an individual basis, with adequately qualified appraisal firms, corporations or individuals competent to deliver the required appraisal reports on schedule.

(ii) In view of the technical nature of appraisals, Division and District Engineers shall give consideration to designating qualified member(s) of their real estate staffs as contracting officer's representative(s) with full responsibility for all cost estimates involved in contracting for appraisal services and reports. Such contracting officer's representative(s) may also, in the designation of the contracting officer, be utilized to conduct negotiations with the prospective contractors, serve as ordering officer pursuant to the contracts, certify invoices and act in any other capacity within their authority as contracting officer's representative(s).

(6) A copy of the narrative, detailed record of contract negotiations will be forwarded to DAEN-REE, along with the contract as specified above.

(7) In contracting for appraisal reports, contract forms as set forth in Armed Services Procurement Regulations (ASPR) (Chapter I of this title) and ER 1180-1-1 (Engineer Contract Instructions) will be used. An outline of the qualifications of the appraiser employed to perform the contemplated services shall be included in the contract assembly.

(b) *Expert Appraisal Services.* Employment of qualified real estate appraisers and consultants may be effected utilizing the pertinent provisions of ASPR and ER 1180-1-1.

(c) *Obtaining Appraisal Reports by Purchase Order.* (1) Division and District Engineers are urged to utilize an authorized type of purchase order, such as DD Form 1155, in lieu of long-form contract, provided that:

(i) It is in the best interest of the Government, cost wise, not to issue the long-form contract.

(ii) The contractor has performed satisfactorily on at least one contract within the prior three fiscal years.

(iii) The total order, by such purchase orders, from the contractor does not exceed $10,000 for the project during the current fiscal year.

(iv) The order is accompanied by a brief history of negotiation signed by both the contractor and the contracting officer's representative(s).

(2) Care should be exercised to insure that the above provisions are used only to order supplementary reports, single appraisals, and other "one-time" reports needed.

(d) *Department of Justice Consultation.* Authorized local representatives of the Department of Justice will be consulted concerning the acceptability of the appraiser(s) prior to negotiating any appraisal contract covering tracts proposed for acquisition. The local representative must also approve the per diem fee to be utilized in the appraisal contract. Where agreement cannot be reached between the Division or District Engineer and the local representative of the Department of Justice as to the selection of the appraiser(s), a complete report will be submitted to DAEN-REE, for resolution with the Attorney General.

(e) *Interdepartmental Services.* Division Engineers are authorized to arrange for interdepartmental services of qualified specialists in the regular employ of other Government agencies in connection with special problems concerning mineral deposits, water rights timber cruises, etc. Division Engineers are further authorized, in their discretion, to redelegate this authority or any part thereof to District Engineers.

Subpart C—Acquisition

PROCUREMENT OF TITLE EVIDENCE, TITLE CLEARANCE, AND CLOSINGS

§ 644.61 General.

(a) *Purpose.* Sections 644.61 through 644.72 describe the procedures relating to the procurement of title evidence, title clearance, and closings for the acquisition of real estate and interests therein for all land acquisition programs administered by the Chief of Engineers. Exceptions in connection with the acquisition of properties under the Homeowners Assistance Program are set forth in Subpart E.

(b) *Applicability.* These sections are applicable to all Division and District Engineers having real estate responsibility.

(c) *Guidelines.* (1) The satisfactory progress of land acquisition programs necessitates the prompt procurement of title evidence and prompt title clearance. One of the following types of title evidence should be obtained, after considering the cost of the several types and other factors mentioned below. To effect these objectives, careful planning is essential, including a determination of the most acceptable and available type of title evidence and the source from which such title evidence may be procured. The Chief of Engineers is responsible for procuring all title evidence, including title evidence needed for lands which are acquired by condemnation proceedings. The early procurement and examination of the title evidence and title clearance will expedite payment to landowners from whom offers are obtained or against whom condemnation proceedings are filed.

(2) Insured certificates of title or policies of title insurance shall be obtained wherever possible. This is on the theory that the Government is buying title searching service as well as the title evidence itself and is avoiding the time and cost of examining abstracts of title, generally voluminous in nature.

(3) Where it is not possible to obtain certificates of title or title insurance, abstracts of title may be obtained, as a last resort.

(4) As used in these sections, an abstract of title is a synopsis or digest of all instruments of record affecting the title to a specific parcel of land. It neither guarantees nor insures the title. A certificate of title is a contract whereby a title company certifies that title to a specific parcel of land is good and unencumbered of record in a named person excepting only such defects and encumbrances as are shown therein. The liability of the company is limited to an amount specified in the certificate. A title insurance policy is a contract which insures that the owner or mortgagee will not suffer any loss or damage by reason of defects in the title to the property, or liens or encumbrances thereon existing at the date of the policy, except those defects, liens, or encumbrances which the policy specifically excepts. Liability thereunder is not limited to matters of record but extends to matters beyond the record.

(5) The Directory of the American Land Title Association may be obtained upon request to the Association at 1828 L Street, NW., Washington, DC 20036, or to any major title insurance company. This Directory lists, by States, the abstract and title companies which provide title insurance. These companies are acceptable to the Attorney General. Requests for furnishing title certificates or title insurance should be made to the major title insurance companies in addition to local abstractors and title companies.

(6) From past experience, it is considered that the procurement of certificates of title or title insurance is more economical than abstracts of title and the use of these types of title evidence expedites payment to landowners. In the majority of the States either cer-

tificates of title or title insurance are obtainable and the premium for issuance of such certificates or policies is based on a schedule of fees approved by the State Insurance Commission or some similar State agency. The premium fixed by such schedules, in most cases, includes the charge for title examination (preliminary certificate of title or preliminary binders) and the charge for insurance (final certificates of title or title guarantee policy) and any variance from the prescribed fees is considered a violation of the Sate law or regulation. Most State Insurance Commissions have recognized and approved the forms of certificates of title and title insurance policies prescribed by the Attorney General and have authorized their use in lieu of owners' policies. Division and District Engineers should familiarize themselves with the State title insurance laws and regulations. If prices quoted by all possible sources seem exorbitant, the matter should be referred to HQDA (DAEN-REA-P) WASH DC 20314 for action.

§ 644.62 Title evidence.

(a) *Acceptable Types of Title Evidence.* (1) Certificates of title are acceptable title evidence. Certificates of title must be in a form acceptable to the Attorney General. An acceptable form of certificate of title which has been approved by the Attorney General has been issued by the Chief of Engineers as ENG Form 903, Certificate of Title.

(i) In contracting for certificates of title, ENG Form 1016, Specifications for Furnishing and Delivering Certificates of Title Owner's Title Guarantee (Insurance) Policies and Continuations Thereof, will be used.

(ii) Any title or abstract company approved by the Department of Justice and authorized and qualified to issue certificates of title in the State where the land is located will be acceptable to furnish certificates of title (Department of Justice "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States, 1970.") In those few jurisdictions where bar associations or other public or professional bodies hold that the issuance of certificates of title is the issuance of title opinions and therefore the practice of law and where title companies as corporations cannot engage in the practice of law, insured certificates of title may be procured from attorneys, acceptable to the Lands Division of the Department of Justice, acting as agents for title companies. The procedure for the selection of attorneys is set forth in § 644.63(b).

(iii) Certificates of title will be based on a search of all records affecting the title to the land and be unqualified as to the period of search. In the event that it is not practicable to obtain certificates of title, unqualified as to the period of search, all pertinent facts will be referred to the Department of Justice for consideration and approval.

(iv) Certificates of title or title insurance policies shall not limit the liability of the title company to a sum less than 50 percent of the reasonable value of the property. If property is acquired by donation or exchange, the value will be determined by the Corps of Engineers. However, as to acquisitions valued at more than $50,000, the liability of the title company may be limited to 50 percent of the first $50,000 and 25 percent of that portion of the value in excess of that amount. This limitation on the general rule has been approved by the Department of Justice. The appropriate ENG Forms for specifications for supplying title evidence may be amended, if that limited liability can be obtained. A certificate of title or title insurance policy by one title company for a single acquisition valued at more than 25 percent of the admitted assets (after deducting existing liabilities secured or unsecured and excluding any trust or escrow funds) of the issuing company is not acceptable.

(v) Generally, it is not necessary to obtain a final certificate of title when land is acquired by condemnation proceedings. However, it may be necessary that an intermediate certificate of title be obtained setting forth the limitation of liability of the title company. Division and District Engineers will be governed by the requirements of the local United States Attorney as to the necessity of obtaining an intermediate or final certificate of title.

(vi) Certificates of title, whether preliminary, intermediate, or final, will be procured in sufficient numbers to satisfy the needs of the District involved. Normally an original and two signed copies of each certificate of title will suffice.

(vii) The specifications may be supplemented to require the title company to have a local representative stationed convenient to the project office, when, because of the nature of the project (anticipated complexities of title; high purchase prices, or other reasons), it is considered advisable that a local representative be available to perform preclosing interim title searches on request of the Contracting Officer.

(viii) The title company's local representative must be authorized to pass on the sufficiency of the proposed deed to the United States; to give final approval of curative material furnished to satisfy title objections set forth in certificates of title; and to testify in court relative to the status of title, if called upon to do so.

(2) Title guarantee or title insurance policies are acceptable title evidence.

(i) Interim binders on owner's title guarantee or title insurance policies supplemented by an owner's title guarantee policy or title insurance policy in the forms approved by the Attorney General (ENG Form 1014), Interim Binder on Owner's Title Guarantee (Insurance) Policy, and ENG Form 1015, Owner's Title Guarantee (Insurance) Policy will be acceptable as evidence of title only in acquisition in those States where certificates of title may not be issued. ENG Form 3893-R is the form of endorsement for use with the title insurance policies when changes or corrections become necessary. No other substantial variation in the form of interim binder or the form of title guarantee or title insurance policy will be acceptable without prior approval of the Attorney General.

(ii) Companies contracting to issue such interim binders or preliminary reports and title guarantee or title insurance policies must have authority under the laws of the State of their incorporation and their charter to issue the same. They must also be financially sound and be willing and able to issue such binders and policies for all tracts for the amount of liability as set forth above.

(iii) In contracting for title guarantee or title insurance policies, ENG Form 1016, Specifications for Furnishing and Delivering Certificate of Title Owner's Title Guarantee (Insurance) Policies and Continuations Thereof, will be used.

(iv) The interim binder or preliminary report must disclose the title holders of record and contain full information on all matters set forth in the binder as affecting the title. This data must be in sufficient detail to enable an attorney examining the report to determine the nature and extent of such matters and their effect on the validity of the title of the land described therein. The contents of the report must meet the requirements of ENG Form 1016.

(v) The provisions of paragraphs (a)(1) (iv), (v), (vi), (vii) and (viii) of this section also apply to title guarantee or title insurance policies.

(3) Abstracts of title may be acceptable title evidence.

(i) Abstracts if title complying with the rules for abstracts in "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States" issued by the Department of Justice, 1970, are acceptable title evidence if prepared by abstractors acceptable to the Attorney General. These may include abstractors employed by a department or agency of the Government. Corps of Engineers personnel generally will not prepare abstracts of title. However, where there is a comparatively small amount of abstract work to be performed, it may be desirable to have the abstracts prepared by qualified Government personnel. In such cases, the prior approval of the Chief of Engineers will be obtained. The request should justify the preparation of abstracts by Government personnel.

(ii) The form and contents of abstracts of title will meet the requirements in the "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States" (Department of Justice, 1970) and ENG Form 1012, Specifications for Furnishing and Delivering Abstracts of Title.

(iii) The period of search of an abstract of title to be acceptable to the Attorney General will, wherever possible, begin with some undisputed source of title such as an original grant or patent from the sovereign. Where it is impossible or impracticable to begin with such grant or patent, refer to "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States" (Department of Justice, 1970) and ENG Form 1012 for guidance.

(iv) In contracting for abstracts of title, ENG Form 1012 will be used. ENG Form 1012 provides for an unlimited period of search. For the purpose of conserving Government funds and in applicable easement acquisitions, Division and District Engineers are authorized to modify ENG Form 1012 to provide for the mimimum period of search allowable under the regulations of the Department of Justice, when deemed to be to the best interest of the Government.

(4) Where the consideration to be paid by the Government is $1,000 or less, acquisition in fee may be based upon a title search by a staff attorney when it is deemed to be in the best interest of the Government. The Preliminary Certificate of Title, ENG Form 909, shall be based upon a search of the local land records beginning with a deed or other instrument transferring title recorded at least 40 years prior to the date of the preliminary certificate. The Final Certificate of Title on ENG Form 1013, shall be executed by a qualified Corps of Engineers' attorney, preferably the same attorney who executed the preliminary certificate, and shall be based on a further search of the local land records from the date of the preliminary certificate to and including the date and time of recordation of the deed to the United States or to the date title passes in a condemnation proceeding. The attorney preparing such preliminary or final certificate of title shall also prepare an Abstract of Title evidencing the results of his search of the records. The Certificate of Title will set forth in detail all liens, encumbrances, outstanding interests and other estates adversely affecting the title.

(b) *Easements.* The standards and requirements as to title evidence for fee acquisition, set forth above, will be observed in the acquisition of all easements, except as follows:

(1) Preliminary certificates of title of approved title companies for easement acquisitions will be in the same form approved by the Attorney General for fee acquisitions and issued by the Chief of Engineers as ENG Form 903. Final certificates of title in easement acquisitions, however, must show title to the easement vested in the United States in the same land described in the certificate and the deed to the United States. A form of final certificate of title for easements approved by the Attorney General and issued by the Chief of Engineers as ENG Form 1017, Final Certificate of Title for Easements, will be used in easement acquisitions.

(2) In contracting for certificates of title to easements, ENG Form 1016, Specifications for Furnishing and Delivering Certificates of Title, Owner's Title Guarantee (Insurance) Policies and Continuations Thereof, may be used provided the following paragraph is substituted in the detailed specifications: "Each certificate of title shall be executed in triplicate on legal size paper. Preliminary certificates of title shall be in the form attached hereto, ENG Form 903, and final certificates of title for easements, showing title vested in the United States, shall be in the form attached hereto, ENG Form 1017."

(3) In jurisdictions where it is not possible to obtain certificates of title commercially, title guarantee (insurance) policies may be obtained. In such cases, appropriate adjustment in forms and specifications will be made, comparable to those prescribed for certificates of title to easements above.

(4) For easements costing more than $100 but not in excess of $5,000, the requirements of the Attorney General have been waived. In such cases, it is acceptable to use certificates of title prepared and executed by a qualified Corps of Engineers' attorney. The Preliminary Certificate of Title, ENG Form 909, shall be based upon a search of the local land records beginning with a deed or other instrument

transferring title recorded at least 25 years prior to the date of the preliminary certificate. The Final Certificate of Title on ENG Form 1013, shall be executed by a qualified Corps of Engineers' attorney, preferably the same attorney who executed the preliminary certificate, and shall be based on a further search of the local land records from the date of the preliminary certificate to and including the date and time of recordation of the deed to the United States or to the date title passes in a condemnation proceeding. The attorney preparing such preliminary or final certificate of title shall also prepare an Abstract of Title evidencing the results of his search of the records. The Certificate of Title will set forth in detail all liens, encumbrances, outstanding interests and other estates adversely affecting the title.

(5) As to easements which cost $100 or less, acquisition shall be in accordance with the provisions of paragraph (5) on page 5 of "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States" (Department of Justice, 1970) which permit such acquisition to be based on a last owner search. Any search authorized by these provisions may be conducted by a qualified attorney employed by the Corps of Engineers.

§ 644.63 Contracting for title evidence.

(a) *Survey of Area and Source of Title Evidence.* Contemporaneously with the preparation of the real estate design memorandum, or real estate planning report, the Division or District Engineer is requested to:

(1) Give careful consideration to the problems involved to determine the most acceptable type of title evidence, its source, availability of title plants, costs, and time of procurement, so that the most advantageous bid(s) may be received and accepted and the acquisition schedule maintained. In considering costs of abstracts of title versus certificates of title or title insurance, the workhours involved in the examination of abstracts of title by both Corps and Department of Justice personnel should be considered.

(2) Determine the total number of tracks in the project area. In major projects, it may be desirable to invite bids for title evidence for each county or other specified areas, in addition to the entire project, in order to maintain the acquisition schedule.

(3) Determine the names and addresses of title companies and abstractors available to furnish title evidence and whether such companies or abstractors have been approved by the Attorney General as acceptable companies or abstractors. Current information on approved title companies and abstractors may be obtained direct from the Land and Natural Resources Division, Department of Justice, WASH DC 20530.

(b) *Selection Procedure.* (1) Normally selection of persons or firms to perform title evidence services will be based upon formal advertising in accordance with the Armed Services Procurement Regulation (ASPR) (Chapter I of this title).

(2) In those States where the furnishing of title evidence is held to constitute the practice of law and the State canons of legal ethics prohibit attorneys from engaging in competitive bidding for such services, contracts for title evidence services must necessarily be negotiated. In such cases, negotiations shall be conducted with attorneys or law firms duly authorized to practice law in the jurisdiction within which the real property is located. Division and District Engineers shall notify HQDA (DAEN-REA-P) WASH DC 20314 before negotiating for title evidence, and submit the list of attorneys with whom negotiations may be conducted. Selections shall be in accordance with the procedures set forth below:

(i) A contract for title services shall be based upon, but not limited to, consideration of the following professional qualifications necessary for the satisfactory performance of the services required:

(A) Professionally trained for type of work;

(B) Specialized experience in the type of work required;

(C) Capacity to accomplish the work in the required time;

(D) Past experience, if any, with respect to performance on Corps of Engineers contracts;

(E) Location in the general geographical area of the project to which the services relate: *Provided,* That there is an appropriate number of qualified attorneys or law firms therein for consideration; and

(F) Volume of work previously awarded, with the objective of effecting an equitable distribution of title evidence contracts among qualified attorneys and law firms.

(ii) A preselection list of qualified attorneys and law firms shall be prepared by a preselection board from data submitted by interested attorneys and law firms and from other pertinent information which may be available. The list shall be approved by the District Engineer or his designee.

(iii) A selection board shall review the qualifications of each of the attorneys or law firms on the preselection list, in accordance with the procedure established in paragraph (b)(2)(i) of this section and shall recommend to the District Engineer, in order of preference, a minimum of three for approval for contract negotiations.

(iv) Upon approval of the selections by the District Engineer and such approval as may be required by paragraph (b)(2)(vi) of this section, negotiations shall be initiated with the first selected attorney or law firm. If the negotiations result in a price which exceeds the Government estimate, revised to correct errors of fact or judgment, if any, by more than ten percent, the Contracting Officer shall terminate the negotiations and request a proposal from the attorney or law firm next in order of preference.

(v) Preparation of preselection lists and selections for contracts estimated to cost more than $10,000, shall be accomplished by formally constituted boards consisting of at least three members, one of whom shall be the District Counsel or an attorney on his staff, and one of whom shall be the Chief, Real Estate Division, or a member of his staff.

(vi) Special approval shall be required for certain selections as indicated below:

(A) When the estimated cost of a contract to be negotiated exceeds $100,000, the selection shall require the approval of the Division Engineer.

(B) When an attorney or law firm, to which the District has awarded contracts totalling over $100,000 during the current fiscal year, has been selected by the District for additional negotiations, the selection shall require the approval of the Division Engineer.

(C) When the estimated cost of a contract to be negotiated exceeds $200,000, the selection shall require the approval of the Director of Real Estate, OCE, or his designee, with the concurrence of the Chief Counsel or his designee.

(c) *Forms to be Used.* When purchasing title evidence, Standard Form 33, Solicitation, Offer, and Award, which form embraces an invitation, bid, and acceptance, should be used with copies of ENG Form 1012 or ENG Form 1016, depending upon the type of title evidence to be obtained. Standard Form 33 will state that time is of the essence; that ability to comply with delivery requirements is mandatory; that the specifications attached thereto constitute a part of the proposed contract; the quantity and description of the supplies by item to be furnished; the time, place, and method of delivery; and the primary period of contract and extensions. Bids must be submitted in the form required by the invitations for the bids, so that the successful bid can be accepted on Standard Form 33 and a formal contract consummated thereby. The contract must incorporate all the covenants, terms, and conditions which are contemplated.

(d) *Base Price vs. Per-Item Basis.* The invitation will call for the furnishing of an approximate number of certificates of title, abstracts of title, or preliminary binders and title guarantee (insurance) policies, as the case may be, at a stated price per certificate of title, abstract, or preliminary binder and title guarantee (insurance) policy. If this basis of payment is not possible, payment for abstracts may be made on a per-item or per-page basis and certificates of title and interim binders and title guarantee (insurance) policies may be paid for in accordance with an established rate schedule based on the cost of the property. Where necessary, alterations in the payment paragraphs of the specifications may be made in order to comply with local practices, State statutes, or other special requirements.

(e) *Specifications.* The specifications for title service will follow ENG Form 1012 for abstracts, ENG Form 1016 for certificates of title and ENG Form 1014 for interim binders on owner's title guarantee (insurance) policies. Additional provisions may be added as circumstances require, but basic requirements will not be changed.

(f) *Several Contracts for Title Evidence.* To meet the acquisition schedule, it may be necessary to enter into several contracts for title evidence to lands within a designated project area. In such cases, the portions of the projects to be covered by each contract will be defined according to established political subdivisions, such as districts, townships, counties, or any specified part thereof.

§ 644.64 Award of contracts.

(a) *Contract Awards.* Contract awards will be made only by duly qualified contracting officers in accordance with applicable procurement regulations.

(b) *Review of Title Evidence Contracts.* The Contracting Officer, if an employee of the Real Estate Division, or otherwise the Real Estate representative designated by the Division or District Engineer, will review contracts for title evidence. If this review is made by a Real Estate employee other than a Contracting Officer, he will advise the Contracting Officer relative thereto. The Contracting Officer or the Real Estate representative will ascertain that the Department of Justice has approved the bidder, and the contract will not be awarded to any bidder not so approved. The Contracting Officer or the Real Estate representative who is to advise him, will familiarize himself with "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States," issued by the Department of Justice, 1970.

(c) *Distribution.* Upon acceptance, copies of title evidence contracts will be distributed in the same manner as other contracts.

§ 644.65 Ordering title evidence.

(a) *Placing Orders.* Where the contract does not specify the order in which title evidence for particular tracts will be furnished, orders will be submitted to the abstractor or title company on ENG Form 1011, Order for Title Evidence. An accurate legal description of the tract of land involved will be attached to the order or will be typed thereon.

(b) *Orders Based on Contiguous Areas.* If the contract does not contain a list of tracts for which title evidence is to be furnished, orders will be based on contiguous areas of land in identical ownership and will be deemed to be contiguous even though crossed by roads, railroads, rights-of-way, or streams. In such event the variation in quantity shall not exceed plus or minus ten percent as prescribed by ASPR. If there has been a severance of surface and subsurface estates, determination of what constitutes a tract will be based on ownership of the surface. However, in unusual cases where such a contiguous area is composed of several parcels derived through separate chains of title and requiring separate searches of each chain of title down to a comparatively recent date or where such contiguous area lies in more than one section, the Contracting Officer may contract to pay a specified reasonable additional charge for each such additional chain or section if such additional charge is customary in the locality where the land lies.

(c) *Type of Title Evidence.* The order will set forth the type of evidence to be furnished. When abstracts are contracted for, the following rules will be observed:

(1) If an abstract of title in satisfactory form cannot be procured from the landowner, a new abstract will be ordered.

(2) If an abstract in satisfactory form is procured from a landowner, the abstract will be transmitted to the abstractor with an order for a continuation of the old abstract.

§ 644.66 Payment for title services.

(a) *Approval.* The Contracting Officer will approve payment for all title evidence obtained in connection with the acquisition of land from funds available to the Division or District Engineer for that purpose, whether the land is acquired by purchase or condemnation.

(b) *Review.* When abstracts are furnished on a per-item or per-page basis, the contents must be carefully reviewed by a qualified representative of the Division or District Engineer, to insure that bills are not excessive and that abstracts do not include superfluous material. Where erroneous or superfluous material is included in abstract, the bills involved will be corrected so that payment for such material is not made. All title evidence will be examined to determine that there has been full compliance with the specifications.

(c) *Payment for Title Evidence.* Payments for title evidence will be made by the Contracting Officer from available funds for the project to which the title evidence pertains, upon receipt of certified and approved vouchers.

(d) *Preparation of Invoices for Title Services.* The abstractor or title company will submit a certified invoice for services rendered, to the office to which the title evidence was delivered for review. The invoice must specify the particular type of title evidence furnished, the tract number, name of owner, name of project, and contract number. Invoices found to be correct will be certified as to receipt of the services by the receiving office and will be transmitted to the Division or District Engineer for further action and payment.

§ 644.67 Approval of Title by the Attorney General.

(a) *General.* Section 355 of the Revised Statutes of the United States, as amended (40 U.S.C. 255), formerly required the written opinion of the Attorney General in favor of the validity of the title to lands as a prerequisite to the expenditure of public funds thereon.

(b) *Delegation.* Pursuant to the provisions of Pub. L. 91-393, approved September 1, 1970, authority to approve title to lands being acquired for the use of the Department of the Army, or of any other department or agency for which the Department of the Army is authorized to acquire land, has been delegated to the Department of the Army, subject to the supervision and review of the Attorney General. Generally, military authorization and/or appropriation legislation expressly authorizes construction on the land prior to approval of title.

(c) *Redelegation.* The authority delegated to the Department of the Army pursuant to Pub. L. 91-393 has been redelegated to Division and District Engineers with real estate responsibility.

(d) *Issuance of Title Opinions.* Division and District Engineers are authorized to designate staff attorneys to give written approval of the sufficiency of title to land for the purposes for which the property is being acquired. Such attorneys shall issue preliminary and/or final opinions of title.

(1) Attorneys designated for such purposes will have as a minimum five years legal experience, from the date of admission to a State bar, including three years experience in the law of real property. Real estate attorneys on the staffs of Division and District Engineers, who possess these qualifications, will be designated by the Division and District Engineers, in writing, to pass on the sufficiency of title to lands pursuant to the said delegation. The names of such attorneys shall be furnished to HQDA (DAEN-REA-P) WASH DC 20314 as soon as possible.

(2) A final opinion of title shall be issued in all acquisitions, except for easement acquisitions not in excess of $1,000 which are governed by § 644.69(b).

(3) Division and District Engineers are authorized to waive the issuance of written preliminary opinions of title where the closing of the case is based upon a certificate of title or title insurance issued by an acceptable and approved title company, in either fee or easement acquisitions.

(4) A preliminary and a final opinion of title shall be issued in all fee and easement acquisitions involving abstracts of title, except for easement acquisitions not in excess of $1,000 which are governed by § 644.69(b).

(5) Any final title opinion issued pursuant to the delegated authority shall substantially follow the format

of the Attorney's Final Title Opinion (Figure 5-3 of EP 405-1-2).

(e) *Opinion of Attorney General.* Whenever the District or Division Engineer determines that a title defect is of such character that a possibility exists that it may be waived, the case shall be submitted to HQDA (DAEN-REA-P) WASH DC 20314 for review and transmittal to the Attorney General for a title opinion. The letter of submittal shall contain or be accompanied by the information and data required by § 644.72(b).

(f) *Rejection Opinion.* If it is obvious that no possibility of waiver of a title defect exists, a title opinion shall be issued according to the procedure set forth in § 644.67(d). Copies of such opinion shall be submitted with the condemnation assembly.

§ 644.68 Title Clearance—Certificate of Title and Title Insurance.

(a) *Curative Action.* Upon receipt of an acceptable certificate of title, ENG Form 903 or an interim binder on an owner's title guarantee or insurance policy, ENG Form 1014, the title evidence will be reviewed by a qualified real estate attorney of the Corps of Engineers. Where the title evidence indicates that the acquisition of the land or interest therein by purchase is feasible, and a satisfactory ENG Form 42, Offer to Sell Real Property, or ENG Form 2970, Offer to Sell Easement, is received from the landowner and accepted by the Government, curative action will be conducted and curative material will be processed as follows:

(1) With regard to the title objections set forth in Schedule "B" of certificates of title or interim binders, it will be necessary to take such curative action as will insure the issuance of a final certificate of title or title guarantee or insurance policy showing title vested in the United States of America, subject only to those objections, if any, which have been administratively waived.

(2) As set forth in the title contract, the title company will authorize its local representative to give final approval of curative material furnished to satisfy such objections and insure their elimination from the final certificate of title or title guarantee or insurance policy. As such curative material is approved, the local representative of the title company will:

(i) Initial, or otherwise indicate, on the margin of the preliminary certificate or interim binder, the fact that the objection has been eliminated through the procurement of satisfactory curative material.

(ii) Determine whether or not he wishes the curative instrument recorded and if the instrument is to be recorded, so indicate on the margin of the certificate or interim binder. By the express terms of the offer to sell, the vendor is responsible for payment of recording fees on such curative material.

(iii) Where curative material is not recorded, the title company will be permitted to retain such material if they wish it for their files; otherwise, it will be placed with the title assembly. If the original curative instruments are retained by the title company, true copies will be transmitted with the Final Title Assembly to HQDA (DAEN-REA-P) WASH DC 20314.

(b) *Intermediate Certificates or Interim Binders.* In the following types of cases, it may be necessary, after examination of the preliminary certificates of title or interim binder, to obtain intermediate certificates of title or interim binders in order to perfect title prior to closing the transaction:

(1) When the signer of the offer is not the record title holder but is the holder of a contract for purchase, recorded or unrecorded, the preliminary certificate of title or interim binder will show title in the record title holder. In such cases, the certificate or binder will make appropriate reference to the contract. It will recite the action necessary to complete the contract and effect transfer of title from the record holder to the contract purchaser. When the deed to the contract purchaser is recorded, an intermediate certificate of title or interim binder, in proper form, will be obtained.

(2) In those cases in which record title is vested in a deceased person, the preliminary certificate of title or interim binder may be issued in the name of the deceased record owner, followed by the word "deceased," and will be ac-

companied by a letter from the title company stating whether a judicial proceeding will be required, or whether affidavits of heirship, or other forms of proof, will suffice to permit the issuance of intermediate certificate or binder showing title vested in the heirs of the deceased.

(i) Where a judicial proceeding is required, action will immediately be taken by the owners to perfect title by such proceeding, and, upon completion, an intermediate certificate of title or interim binder should be obtained. If such action cannot be completed within 60 days, action will be taken to acquire the tract by condemnation, § 644.72(a).

(ii) Where a judicial proceeding is not required, it will be necessary to effect the necessary curative action and obtain an intermediate certificate or interim binder showing title in the heirs of the deceased record owners.

(3) In those cases in which conveyance to the United States is to be made by a fiduciary, a corporation, a political subdivision, or an unincorporated association, the certificate of title or interim binder will state whether the proposed grantor has legal authority to convey valid title to the United States, and, if so, will cite the source of the authority. If the preliminary certificate of title or interim binder does not so indicate, it will be returned to the title company for correction or for issuance of an intermediate certificate of title or interim binder.

(4) Where the certificate of title or interim binder contains any objection, or reference to liens of taxes, assessments, bonds, or other indebtedness of a road improvement, school, drainage, or other type of special improvement district, the specifications provide that the certificate or interim binder will also contain reference to the statute or statutes, under which the district was created, its bonds issued, and its taxes levied; the amount of taxes and assessments levied and bonds issued; and other additional pertinent information. If the preliminary certificate or interim binder does not contain sufficient information to enable an examining attorney to determine the nature and extent of the lien, if any, on the land, of such taxes, assessments and bonds, it will be returned to the title company for correction or for issuance of an intermediate certificate of title or interim binder. If the preliminary certificate or interim binder does not clearly indicate that the bonds or taxes of such district become a lien annually at the same time as the lien of ad valorem taxes attaches to land in the State and that the lien is of the same nature as the lien of ad valorem taxes, the information specified above must be obtained and a determination must be made as to the nature and extent of the liens of such bonds and taxes.

(5) Where the certificate of title or interim binder discloses a covenant or condition restricting the use of the land, the certificate or interim binder will set forth the restriction, will quote the provision imposing the restriction or creating the right of reverter for a breach thereof, and will state whether a release will eliminate the objection. If such information is not contained in the preliminary certificate of title or interim binder, it will be returned to the title company for correction or for issuance of an intermediate certificate of title or interim binder. If a release will eliminate the objection, action will be taken to obtain an appropriate release from the person or persons holding the right of reverter. Should the title company hold that the title cannot be perfected by a release or if an acceptable release cannot be obtained, action will be taken to acquire the tract by condemnation.

(6) When the specifications require the title company to include any of the above information in the preliminary certificate of title or interim binder and it is necessary to obtain an intermediate certificate of title or interim binder due to the omission of such information from the preliminary report by the title company, the intermediate certificate of title or interim binder will be furnished without cost to the United States.

(c) *Question of Law.* Any difficult or complicated question of law raised by an objection or exception in a preliminary or intermediate certificate of title or interim binder should be submitted to HQDA (DAEN-REA-P)

WASH DC 20314 for review and transmittal to the Attorney General for an opinion. The letter of submittal shall contain a full statement of the facts and references to the provisions of applicable statutes and pertinent decisions of state courts on the question involved. This action should be taken before closing. This action should also be taken on questions involving the nature and extent of the liens of bonded indebtedness, assessments, or taxes to meet the bonded indebtedness of special improvement districts, or relating to restrictive covenants.

§ 644.69 Title Clearance—Easements.

(a) *Easements Costing in Excess of $1,000.* Curative action and clearance of title to easements costing in excess of $1,000 will be the same as in fee acquisitions, as outlined above, except as follows:

(1) Under an agreement with the Department of Justice, title to easements will be approved subject to outstanding encumbrances, such as mortgages, deeds of trust, judgments, and vendors' liens, where the tract is not encumbered in excess of 50 percent of the reasonable value of the remaining property, and the consideration being paid for the easement does not represent a sum in excess of ten percent of the value of the remaining property. (As to taxes, see § 644.70(k)(6).)

(2) For the purpose of making the determinations necessary to apply the formula set forth in paragraph (a)(1) of this section, resort may be had to the tract appraisal, provided it is based on a "before and after" approach, in which case the amount of the "after" appraisal will be used as the reasonable value of the remaining property. In the event no such appraisal has been made, a memorandum estimate by a qualified appraiser (staff or contract) will be obtained. Determination of the total encumbrances may be made on the basis of the face of the encumbering instruments. However, if it is necessary to determine that the total amount of the outstanding liens as of the date of closing has been reduced to an amount less than 50 percent of the reasonable value of the remaining property, such reduction must be evidenced by signed statements from the lienees or their authorized representatives. The appraisal or memorandum estimate and the lienee statements will be placed in the tract file.

(3) On the basis of the determinations described in paragraph (a)(2) of this section, the appropriate information will be inserted on ENG Form 3536, Statement Concerning Outstanding Encumbrances, which will be signed by the closing agent. The original will appear as a separate document in the Final Title Assembly submitted to HQDA (DAEN-REA-P) WASH DC 20314.

(b) *Easements Costing Not in Excess of $1,000.* (1) Requirements for the release or subordination to such easements of mortgages, deeds of trust, judgments, vendors' liens, taxes which are a lien, whether or not presently due and payable, and similar encumbrances will ordinarily be the same as for easements costing in excess of $1,000.

(2) In unusual circumstances, these requirements need not be applied if the purchase price of the easement is insufficient to satisfy the liens and interest, or the amount of such liens or interest is small in comparision with the value of the land in which the easement is being acquired, and in comparison with the cost of condemnation proceedings to clear the title. In such cases, the Division or District Engineer (or the Chief, Real Estate Division, if delegated such authority) may waive such title infirmities as he determines will not interfere with the use of the easement by the Government or jeopardize the interests of the United States: *Provided:*

(i) The easement deed contains a general warranty covenant by the grantor to satisfy all such unpaid taxes and other liens and to warrant the title against any encumbrances or interests left outstanding.

(ii) The Division or District Engineer (or the Chief, Real Estate Division, if delegated the authority) has determined that such outstanding liens, encumbrances, or interest, if left outstanding, will not interfere with the Government's use of the easement, or will not jeopardize the interests of the United States, and in his opinion the title is sufficient. A certificate to this effect should be attached to the Final Title Assembly.

(c) *Curative Action.* (1) Curative action will be initiated promptly in all cases to eliminate all title defects or encumbrances, except those which may be administratively waived, those which may be eliminated by the payment of money and cleared at the time of closing, and those which may be waived as hereinafter provided. Curative material need not be recorded, however, until the closing of the transaction.

(2) All encumbrances, defects, outstanding interests, and other matters shown in the preliminary certificates of title or interim binders, must be cured and eliminated before delivery of the purchase check, except those of a nature which have been waived as not interfering with the Government's use of the easement or as not jeopardizing the interest of the United States.

§ 644.70 Closing of cases.

(a) *Closing and Settlement Officers.* Payment and closing of cases will be initiated immediately upon completion of curative action, by qualified Closing Officers employed by the Corps of Engineers. To be qualified, a Closing Officer must be employed in the Real Estate Division of a Division or District Office, or in a Real Estate Project or Suboffice, in an Attorney-Advisor position, or in a Realty Officer position if he is a member in good standing of the Bar of a State, Possession, or the District of Columbia, and has been instructed in Federal procedure and in the requirements for closing land acquisition transactions by a Division or District Closing Officer and has been approved by the Division or District Engineer to close land acquisition transactions independently. It is no longer necessary for Closing Officers to be individually bonded. Contracting for closing services will require prior approval of HQDA (DAEN-REA-P).

(b) *Payment.* Payment for land, or interests therein, will be made from funds available to the Division or District Engineer.

(c) *General.* The details of the closing necessarily differ according to the number of vendors and the outstanding interests, the number and variety of the encumbrances and title objections to be met, and miscellaneous other details resulting from complications in the particular title. Upon receipt of the check and title papers, the Closing Officer will review the entire file relating to the acquisition, fully acquaint himself with the terms and conditions of the sale, and with the condition of the title, and will ascertain whether there are any special conditions to be performed, or requirements to be met, on the part of the landowner or the Government and what objections to the title are to be eliminated before valid title may vest in the United States.

(d) *Curative Data.* The Closing Officer will determine the character and amount of all outstanding interests in, liens on, or claims against the land, which are to be satisfied out of the purchase price, and see that necessary curative action has been taken and curative data obtained to cure all defects in and meet all objections to the title. If the title evidence consists of a certificate of title of a title company, or a title guarantee policy, approval of the curative material, obtained to eliminate the title objections, must be obtained from the title company.

(e) *Continuation of Title Search.* The Closing Officer will satisfy himself that no change has occurred in the land records from the date of the prior certification which will adversely affect the title to the real estate interest being acquired by the United States. Where deemed appropriate because of the complexities of the title, the amount of the purchase price, or other reason, the local representative of the title company or the abstracter will be requested to examine the title records for the purpose of making this determination, and a continuation of the title evidence should be obtained, if considered necessary. Otherwise, the interim title search may be made by the Closing Officer.

(1) If no adverse change in the status of title has occurred since the date of the preliminary or the latest certification of the title by the abstracter or the title company, as the

case may be, the Closing Officer will proceed to close the case.

(2) In case of change in ownership during the period, the Closing Officer will order a continuation of the abstract or an intermediate certificate of title or interim binder, as the case may be, and take such action as necessary to cure the title.

(f) *Payment and Closing Sheet.* ENG Form 1566, Payment and Closing Sheet and Receipt for United States Treasurer's Check, covering all charges to be eliminated by payment of money to be deducted from the purchase money check, will be prepared in advance of closing. This sheet will show, in detail, all disbursements of the purchase money, including all amounts to be expended for satisfaction of:

(1) Taxes and assessments.

(2) Outstanding judgments—State and Federal.

(3) Mortgages, deeds of trust, and other liens.

(4) Amounts received under any contract or bond.

(5) Landowner's balance after all charges are deducted from the purchase price.

(g) *Division or District Inspection of Premises.* The Closing Officer or other authorized Division or District employee will personally make an inspection of the premises to ascertain whether any person is occupying the property in whole or in part.

(1) The Closing Officer or an authorized Division or District employee will prepare ENG Form 798, Certificate of Inspection and Possession.

(2) If any person other than the vendor is found in possession, the Closing Officer will secure a disclaimer on ENG Form 1290, Disclaimer. The disclaimer will be modified to make allowance of any provision in the offer to sell permitting possession after closing.

(3) The Closing Officer or an authorized Division or District employee will check to determine that the buildings, improvements, and crops listed on the appraisal report are still on the land being conveyed. Where buildings, improvements, and crops have been reserved by the landowner, it will be determined that only the items reserved have been removed. Whenever possession of land is surrendered to the Government before the time of payment and closing, and immediate inspection and report ENG Form 1567, Report on Vacation of Property, will have been made. The Closing Officer may rely upon this report for the inspection required in the first part of this paragraph unless he is aware of circumstances which would make a supplemental inspection and report proper. If no such inspection and report have been made and possession has been surrendered to the Government, the inspection and report must be made at this time.

(4) The Closing Officer or an authorized Division or District employee will determine whether there have been repairs or improvements to or construction on the premises which might give rise to mechanics liens.

(5) The ENG Form 798 will be executed and placed with the title papers. If executed by an employee other than the Project Manager or Closing Officer, it must be approved by the Project Manager or Closing Officer, to indicate that the Project Manager or Closing Officer has authorized the employee signing the certificate to make the inspection and is satisfied it has been properly done.

(h) *Deed to the United States.* (1) The deed to the United States will be drafted in accordance with the "Standards for the Preparation of Title Evidence in Land Acquisition by the United States," issued by the Department of Justice in 1970.

(2) Where the landowner's name appears in various forms among the title papers, full use will be made of the "also known as" clause in identifying the grantor in the deed to the United States.

(3) The deed shall contain a quitclaim clause by which the grantor quitclaims to the United States all right, title, and interest which the grantor may have in the banks, beds, and waters of any streams bordering the said land to be conveyed, and also all interest in alleys, roads, streets, ways, strips, gores, or railroad rights-of-way abutting or adjoining said land and in any means of ingress or egress appurtenant thereto.

(4) Recording fees, transfer taxes, and similar expenses incidental to conveying real property to the United States; penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and the pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the United States, or the effective date of possession of such real property by the United States, whichever is the earlier, shall be paid by the Government pursuant to authority of section 303, Pub. L. 91-646, approved January 2, 1971.

(i) *Satisfaction of Liens and Encumbrances.* All mortgages, deeds of trust, judgments, mechanics liens, and similar encumbrances will be satisfied and released or discharged of record. In the acquisition of easements, liens and encumbrances should be satisfied, released or subordinated to the Government's easement, except as provided in § 644.69(a) or unless administratively waived under § 644.69(c).

(j) *Payments to Tenants and Lessees.* Amounts due lessees, or other tenants, under ENG Form 1564, Consent to Offer to Sell, will be paid from the purchase price or by the landowner direct. In either case, proper receipts and releases will be obtained.

(k) *Satisfaction and Release of Liens of Taxes and Assessments.* (1) Except as provided in § 644.69(b) and paragraph (k)(6) of this section, all taxes and assessments which, under the law of the State where the land is located, are a lien on the property as of the date of the delivery and recordation of the deed to the United States must be paid at or before closing, unless provision for their payment is made as follows:

(i) Where closing takes place before the completion of the assessment and levy of the taxes necessary to the determination of the amount of the taxes, or before the taxes are due and payable, a sufficient sum will be withheld from the purchase price to satisfy such taxes when the amount is later determined or they later become due and payable. In cases where the amount of taxes has not been determined, an estimate will be made, after consultation with the assessor and consideration of the amount of taxes paid on the land for the preceding year. The amount withheld should be at least 20 percent in excess of the amount of taxes assessed against the property for the preceding year.

(ii) If the taxes are not due and payable under State law, though the amount has been determined at the time of closing, payment will not be made to the collector or other official charged with the collection of taxes, unless he has authority to accept payment and receipt for them in advance of the due date.

(2) Funds withheld for the payment of taxes will be transmitted promptly to the Division or District Engineer in the form of cashier's check or money order payable to the Treasurer of the United States, unless the taxes are paid or held in escrow by the title company. The Closing Officer, in transmitting such payments, must clearly identify, by name, the vendor from whom the tax money was withheld, and must identify the land for which the taxes were withheld by its tract number in the project. He must also identify the taxes for payment of which the money has been withheld by specifying the type of taxes, such as county, city, or school. He will set forth the year each became or becomes due and fully explain the manner in which payment or withholding has been handled in order that proper payment will be effected by the Division or District Engineer when the taxes are due and payable. Any balance of the amount withheld and not needed to satisfy the taxes will be refunded to the grantor.

(3) Where payment of the taxes is not possible at the time of closing and funds are withheld for this purpose, the Closing Officer will immediately notify the local tax official that title to the particular tract has been conveyed to the United States and that funds have been withheld for the payment of taxes, specifying the taxes for which an amount has been withheld and stating that such funds are in the custody of the Division or District Engineer. In giving such notice, he will use ENG Form 894, Notice to Tax Official.

(4) When the taxes become due and payable, the Division or District Engineer will pay such taxes from the funds withheld from the purchase price. Any excess between the amount of taxes actually paid and the amount withheld will be refunded to the grantor by the Division or District Engineer. Refund checks will be transmitted to the grantor only after it has been definitely determined that all taxes which were liens on the tract are shown as satisfied on the books of the tax collector. This is necessary to avoid the possibility of a refund being made before satisfaction of all tax liens. The tax receipt should be forwarded to HQDA (DAEN-REP-S) WASH DC 20314 for filing with the original title papers.

(5) Where the evidence of title consists of certificates of title or title insurance, and funds are withheld for payment of taxes, the amount so withheld may be turned over to the title company, provided:

(i) The title company is financially responsible and will agree to issue a final certificate of title or title policy in which no tax liens or unpaid taxes will be noted or, if noted, will be followed by the statement: "For the payment of which provision has been made by deposit of a sufficient sum with this company."

(ii) The title company will enter into an escrow agreement with the grantor to hold such sum for the satisfaction of the taxes when they become due, and to return to the grantor any excess remaining after their payment.

(6) Agreements have been reached with the Department of Justice that, in the acquisition of easements, the following will apply:

(i) No provision need be made for the payment of taxes which are a lien but are not due and payable, provided that the purchase price of the easement, including severance damage, is not in excess of 50 percent of the reasonable value of the entire contiguous property of the vendor. In the event the value of the easement has been determined by a "before and after" appraisal, the amount of the "after" appraisal will be utilized in making the necessary determination. In the event no such appraisal has been made, it will not be necessary to prepare a complete appraisal of the value of the contiguous property. In lieu thereof, a memorandum estimate by a qualified appraiser (staff or contract) will be obtained and placed in the tract file. In either case, the appropriate information will be inserted on ENG Form 3536, Statement Concerning Outstanding Encumbrances.

(ii) It will not be necessary to withhold funds for payment of current taxes which are due and payable, if the purchase price of the easement is insufficient to pay such taxes. In such case, Item 4 of ENG Form 3536 and the third block of that form will be completed.

(iii) ENG Form 3536 will be signed by the Closing Officer and the original will appear as a separate document in the Final Title Assembly.

(l) *Payment and Recordation of Deed.* (1) No disbursement of the purchase price shall be made until:

(i) A duly executed deed has been accepted;

(ii) All outstanding charges, liens, or encumbrances on the land have been satisfied and discharged, or a sufficient sum has been withheld from the purchase price to satisfy and discharge such charges, liens and encumbrances; and

(iii) The title is sufficient for the purposes for which it is being acquired, and all objections thereto have been eliminated or administratively waived in writing.

(2) When the requirements of paragraph (l)(i) of this section have been satisfied, the balance of the purchase price shall be delivered to the landowners.

(3) The deed and all instruments which release liens or encumbrances on the property shall be promptly recorded.

(m) *Closing of Easements Acquisitions—*(1) *Easement Costing in Excess of $1,000.* Closing requirements and procedures with respect to easements costing in excess of $1,000 are the same as in fee acquisitions, except as to mortgages, deeds of trust, judgments, vendors' liens, and similar title infirmities (§ 644.69(a)), and as to taxes which are liens but which are not due and payable (paragraph (k)(6) of this section).

(2) *Easements Costing Not in Excess of $1,000.* Closing requirements and procedures with respect to easements costing not in excess of $1,000 are the same as a fee acquisition except that title infirmities may be waived as provided in § 644.69(b).

(n) *Payment and Closing Under Power of Attorney.* Where the landowner is unable or unwilling to be present personally or to pay from his own funds the amount necessary to satisfy all encumbrances and expenses, the following steps may be taken:

(1) Obtain a power of attorney from the landowner. Standard Form 232, Power of Attorney by Individual for the Collection of a Specified Check Drawn on the United States Treasury, will be used. If the landowner is a corporation, Standard Form 236, Power of Attorney by a Corporation for the Collection of a Specified Check Drawn on the Treasurer of the United States, and Standard Form 237, Resolution by Corporation Conferring Authority Upon an Officer to Execute a Power of Attorney for the Collection of Checks Drawn on the Treasurer of the United States, will be used. The power of attorney will be drawn in favor of the Closing Officer making the payment and closing. Immediately after the post office address of the Closing Officer, the following will be inserted, "Agent for the Disbursing Officer." This insertion must be initialed by the person(s) executing the power of attorney. (Above forms are available through the local GSA Regional Office.)

(2) Obtain from the landowner ENG Form 1569, Order to Disburse Under Power of Attorney. It will be noted that this form specifically recites types of indebtedness or expense, the names of the persons to be paid under the power of attorney, and the estimated, but not necessarily the exact, amounts thereof. It is important that all items (including cost of revenue stamps, recordation fees for curative material, and bank service charges) be itemized on the form.

(3) The Closing Officer then will take the necessary action for and on behalf of the landowner to discharge the indebtedness and pay expenses under the ENG Form 1569.

(4) If it is possible to have all interested parties, other than the landowner, present at one time and to make all payments simultaneously, a round table closing will be conducted. The Closing Officer, under the power of attorney and order to disburse, will endorse and cash the Treasurer's check and will make the individual disbursements in actual cash.

(5) If it is possible to determine definitely all items of payment simultaneously, but it is not possible to have all interested parties present at one time, the Closing Officer will, under the power of attorney and order to disburse, endorse and cash the Treasurer's check, obtain separate cashier's checks for all items of payment (including the bank services charge for the issuance of such checks), and deliver the checks.

(6) Where it is not possible to determine definitely all items of payment simultaneously, the Closing Officer, under power of attorney and order to disburse, will endorse and cash the Treasurer's check and will obtain separate cashier's checks for all items of payment for which disbursements may be properly made and for any balance representing the total of any items, the amounts of which cannot be definitely determined; in other words, for the residue of the amount of the United States Treasurer's check. In every instance, the cashier's checks will be drawn to provide for endorsement by the Closing Officer or landowner as later determined to be appropriate.

(7) Curative material which requires recordation will be recorded for and on behalf of the landowner and will then be placed with the title papers.

(8) The usual tax receipts, mortgage releases, judgment satisfactions, etc., will be obtained for each monetary encumbrance which has been discharged. These instruments will be placed with the title papers, unless the landowner wishes to retain them.

(9) Separate receipts on ENG Form 1571, Receipt for Payment Under Power of Attorney, must be obtained for each disbursement made under the power of attorney and order to dis-

burse, including a receipt for the balance of the purchase price paid to the landowner. One copy of such receipt will be placed in the project files.

(10) The Closing Officer will prepare an original and two copies of ENG Form 1570, Report of Disbursement Under Power of Attorney, showing the exact amount of each disbursement made under the power of attorney and order to disburse. The Closing Officer will prepare an original and two copies of appropriate certification thereon. The original and two copies will be signed by the landowner, who will retain one copy. The Closing Officer will place one copy in the files of the project office and will place the original with the title papers. The separate receipts on ENG Form 1571 for each disbursement made will be attached to the original ENG Form 1570.

(o) *Procurement of Check.* (1) After acceptance and distribution of the offer assembly and the acquisition is ready for closing, the following instruments and supporting data will be transmitted to the Finance and Accounting Officer for scheduling of SF 1166, Voucher and Schedule of Payments, and issuance of check:

(i) Two true copies of the preliminary opinion of the Attorney General, where required; or

(ii) Two true copies of a preliminary certificate of title or title guarantee policy where the preliminary opinion of the Attorney General is not required; or

(iii) Two copies of ENG Form 909, Attorney's Preliminary Certificate of Title, in easements acquisition which cost less than $1,000; and

(iv) Two true copies of other supporting data evidencing amount due and payable, such as statement of closing attorney; and

(v) Two true copies of the offer assembly or deed executed by the vendor, if offer form has not been utilized.

(2) The following statement, appropriately modified, signed by the Chief, Real Estate Division, may be transmitted in lieu of the above listed certificates. "I certify that the check requested hereby is to pay an obligation of the United States as reflected on the attached (Offer to Sell) (easement or deed). I further certify that the parties signatory to this document and shown on the voucher as payees are the same parties reflected in a preliminary certificate of title issued by the ——— Title Company in the possession of the Real Estate Division of this office. The completion of the transaction will be in accordance with existing regulations pertaining to the closing of real estate acquisitions." The landowner's signature on a voucher is not necessary. On payments involving civil funds, paragraph 3-7g, ER 37-2-10, will be followed.

(p) *Procedure After Payment.* When the above closing requirements have been met, the Closing Officer will:

(1) Immediately order a final continuation of the type of title evidence which has been contracted for. The final title evidence must be dated as of the date of recordation of the deed to the United States, or a subsequent date, to show a valid title vested in the United States of America subject only to those title defects which have been administratively waived or to those liens and encumbrances for which sufficient funds were withheld from the purchase price to satisfy and discharge them.

(2) Check carefully ENG Form 1566, Payment and Closing Sheet and Receipt for United States Treasurer's Check, to see that funds have been properly disbursed.

(3) Review the continued abstract, final certificate of title, or title insurance policy, as soon as they are prepared and determine that the proper preliminary and final title evidence and related papers on the case have been completed in proper order. Thereupon a Final Title Opinion will be prepared.

(4) Transmit as the Final Title Assembly to HQDA (DAEN-REA-P) WASH DC 20314, the Final Title Opinion, title evidence and related papers. This Final Title Assembly must be chronologically arranged and securely fastened for permanent filing, and should include the following:

(i) Abstract of title, properly continued through time of closing; or preliminary, intermediate, and original of final certificate of title; or interim binder and original of the Title Guarantee (Insurance) Policy.

(ii) Curative instruments and material pertaining to title defects appearing in the abstract, the final certificate of title, or the title guarantee or insurance policy.

(iii) Deed to the United States, executed, stamped, acknowledged, and recorded.

(iv) Copy of the accepted offer to sell (ENG Form 42 or ENG Form 2970).

(v) Completed ENG Form 798.

(vi) Completed ENG Form 1566.

(vii) Statement regarding payment of taxes or amount withheld to pay the taxes.

(viii) Where required, completed ENG Form 1290.

(ix) If the power of attorney procedure is followed, power of attorney on proper Department of the Treasury Form and completed ENG Forms 1569 and 1571.

(x) Certified copy of any waiver letter or certificate.

(xi) Any other papers relating to the title or closing of the case.

(xii) An additional copy of the deed and the Attorney's Final Title Opinion for review by the Attorney General.

(5) A copy of the executed and recorded deed will be retained by the Division or District Engineer for the project files.

(6) Similar action will be taken by the Closing Officer in acquisition of easements costing not in excess of $1,000.

§ 644.71 Final Title Assembly.

(a) *Disposition of Final Title Assemblies.* The final title opinion and related papers will be forwarded to HQDA (DAEN-REA-P) WASH DC 20314 for review and disposition. In addition, copies of deeds and related papers in acquisitions for the Strategic Petroleum Reserve Program of the Department of Energy will be forwarded to: Department of Energy, Strategic Petroleum Reserve Project Management Office, 900 Commerce Road East, New Orleans, Louisiana 70123.

(b) *Division/District Files.* True copies will be retained for Division or District files.

§ 644.72 Transfer to Condemnation.

(a) *Transfer of Tracts from Purchase to Condemnation.* If at any time, in the course of acquisition by purchase, it becomes apparent that title clearance and closing cannot be completed within 60 days of the offer to sell, action will immediately be taken to acquire the land by condemnation in order to make funds available to the landowner.

(b) *Contents of Letter of Submittal.* In such cases the letter of submittal will contain or be accompanied by:

(1) All title evidence.

(2) An analysis of the title defects and a statement of the attempts which have been made to cure the defects.

(3) A statement of the attempts to have the title infirmities waived by the title company and the reasons for refusal; or

(4) The curative material which has been obtained to remedy the infirmities; and

(5) Two copies of the offer to sell from the apparent owners.

ACQUISITION BY PURCHASE, DONATION, AND TRANSFER

§ 644.81 General.

Sections 644.81 through 644.88 describe the procedures of the Corps of Engineers relating to the acquisition of land and interests therein for both military and civil works projects by purchase, donation and transfer.

(a) *Applicability.* These sections are applicable to all Division and District Engineers having real estate responsibilities.

(b) *Acquisition Authority*—(1) *Limitation.* Acquisition of land for use by the United States requires express authorization (10 U.S.C. 2676, 41 U.S.C. 14).

(2) *Military.* Title 10 U.S.C. 2571 authorizes transfer of real property between Defense elements without compensation if the Secretaries approve. Title 10 U.S.C. 2662 provides that acquisition of fee title or transfer of real property owned by the United States to another Federal agency, military department or a state must be reported to the Committees on Armed Services of the Senate and House of Repre-

sentatives if the estimated value is more than $50,000 and the transaction may not be consummated until after 30 days have expired from the date the report is submitted to the Committees. Title 10 U.S.C. 2663 provides for acquisition by the Secretary of a military department during time of war or when war is imminent of any interest in land, including temporary use, required for a Defense installation, munitions plant or power plant for production of munitions, through negotiation and purchase, by condemnation or by gift. Title 10 U.S.C. 2672 provides that the Secretary of a military department may acquire any interest in land, including temporary use, by gift, purchase, exchange of United States owned land or otherwise, that he or his designee determines is needed in the interest of national defense and does not cost more than $50,000 exclusive of administrative costs or the amounts of deficiency judgments.

(3) *Civil Works.* Acquisition of real property for civil works projects for which provision has been made by law is authorized in 33 U.S.C. 591-595a and 701. As in the case of military projects, the Secretary of the Army is also authorized to accept donations of lands and materials required for civil works projects.

(c) *Rights-of-Entry.* Rights-of-entry for construction may be obtained by the Division or District Engineer, after he has been authorized by the Chief of Engineers to acquire the land, pending completion of acquisition by purchase or the filing of condemnation proceedings with declaration of taking. In the event the landowner will not voluntarily grant a right-of-entry, an appraisal of the required interest should be made and negotiations conducted on the basis thereof. If the negotiations are not successful, a declaration of taking should be submitted to acquire the necessary rights. The same procedure will be used for acquiring rights-of-entry for other purposes, such as survey and exploration.

§ 644.82 Prerequisites to acquisition.

(a) *Authority to Begin Acquisition.* Action to acquire a tract of land will not be initiated until the Real Estate Design Memorandum (for all projects except military) or Real Estate Planning Report (for Army, other than Civil Works, and Air Force projects) is approved and specific authorization of the Chief of Engineers, or the appropriate Air Force Regional Civil Engineer (AFRCE), to proceed with the acquisition of the project is received by the Division and District Engineer and funds have been made available. Upon such approval, the Division or District Engineer is authorized to initiate action for the acquisition of the estate approved for the particular project in accordance with the procedures hereinafter set forth.

(b) *Tract Description.* Authority to initiate engineering planning of a project will state the mapping procedures provided for in Chapter 3, EP 405-1-2. It is necessary that land requirements be determined, that the various tracts be identified by ownership, and that accurate tract descriptions be developed. Tract ownership data may be developed by Division or District personnel from the local land records or procured by contract from a qualified local Government official, abstractor or title company representative.

(c) *Title Evidence.* With approval to proceed with acquisition, title evidence contracts can be initiated. The procedures for obtaining title evidence are covered in §§ 644.61 through 644.72. Preliminary title evidence to confirm ownership and status of the title is prerequisite to negotiating for acquisition of the land or interests therein.

(d) *Appraisals.* Concurrently with the procurement of title evidence, the appraisal of the land should begin. The appraisal, when approved, forms the basis for the determination of fair market value which will not be less than the approved appraised value. The appraisal procedures are covered in Subpart B. Normally, one appraisal per tract (ownership) will be obtained; however, in unusual cases such as those which involve novel, unique or controversial appraisal concepts, there is no objection to obtaining more than one appraisal covering the same tract if considered advisable by the Division or District Engineer. When fee tracts are acquired by eminent domain procedures, where the value of the property is between $50,000 and $100,000, only one appraisal need be provided to the Department of Justice so long as it is a contract appraisal; two appraisals will be provided for values exceeding $100,000. Easement tracts acquired by eminent domain procedures, in excess of $50,000, will require two appraisals. At least one of the two appraisals must be made by a contract appraiser. Generally, in these cases, the second appraisal is procured only after negotiations indicate that agreement on price cannot be reached and that acquisition by condemnation will be required. The second appraisal will be procured in order that the Corps can take advantage of any negotiating flexibility that the second appraisal may afford in order to preclude court action. It is also necessary that the appraisals be relatively current in point of time (not to exceed six months) since dependent upon the real estate activity and degree of stability of the local economy, significant changes may take place in relatively short periods of time.

(e) *Environmental Considerations.* Paragraph D3, Attachment 1 to Enclosure 1, DOD Directive 6050.1, dated March 19, 1974, subject: "Environmental Considerations in DOD Actions," requires close environmental scrutiny of real estate acquisitions, disposals and outgrants to determine if said actions constitute a "Major Action Significantly Affecting the Quality of the Human Environment (MASAQHE)." If the action is determined to be a MASAQHE, then an environmental impact statement is required. Paragraph D3 is quoted here for ready reference:

> "D. Certain types of actions require close environmental scrutiny because of the possibility that they may either affect the quality of the environment or create environmental controversy. It may be desirable in such cases to have a complete presentation of the environmental aspects of the proposed action available for any interested party. For these reasons, consideration shall be given to documenting the environmental effect of the following types of actions in writing: (The written environmental assessment need not be elaborate for actions in which it is readily determinable that the impact would not be significant; however, negative declarations must be supported by written environmental assessments which generally meet the EIS format requirements.)
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> * * * * *
>
> 3. Real estate acquisition, disposal and outgrants.
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§ 644.83 Negotiations.

(a) *Acquisition Objectives.* The objective of a land acquisition program is to acquire land at a price that will afford each landowner his constitutional guarantee of "just compensation" as that term has been defined by Federal judicial decisions. The Government must never pay less than just compensation unless a gift is intended. In eminent domain proceedings, the just compensation due a landowner is determined judicially by court award or by settlement prior to trial; in a purchase case, it is determined by negotiations leading to a satisfactory price and agreement with the landowner. While it is recognized that an appraisal is only an informed opinion and does not establish or determine just compensation, it is also recognized that, in negotiating for the purchase of land, an appraisal is the best and sometimes the only reliable opinion of the market value of the land which is supported by a thorough, acceptable analysis of market conditions at the time of purchase. Therefore, in the negotiation for the purchase of land, an approved current appraisal shall establish the minimum price to be paid for the land being acquired by the Corps of Engineers. Negotiations or offers below this price are prohibited except where the property is being acquired on a competitive basis and condemnation is not authorized.

(b) *Negotiating Objectives.* In all cases, it is important that the negotiator receives adequate guidelines and explicit instructions. Promptly, after the amount of the estimated just compensation is established, the negotiator shall make an initial offer in the full amount of the fair market value, shall advise the landowner that the land was appraised for such amount, and shall furnish the landowner a written statement of, and summary of the basis for, said amount. A concentrated effort will be made to acquire the land for that amount. This written statement will be in the form of a letter which may be delivered personally or by first class mail. Such summary will include, as a minimum, the following items:

(1) Definition of the term "fair market value."

(2) An accurate legal description and location identification of the real property and the interest(s) therein to be acquired (legal description and estate may be attached).

(3) The amount of the offer and a statement that such amount:

(i) Is the amount believed by the agency to be just compensation for the property;

(ii) Is not less than the approved appraisal of the fair market value of the property;

(iii) Disregards any increase or decrease in the fair market value caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for such project, other than that due to physical deterioration within the reasonable control of the owner;

(iv) Does not reflect any consideration of or allowance for any relocation assistance and payments which the owner is entitled to receive.

(4) An inventory identifying the buildings, structures, fixtures, and other improvements, including appurtenant removable building equipment, which are considered to be part of the real property for which the offer of just compensation is made. The inventory shall include a statement of the utility and condition of said buildings, structures, fixtures, and other improvements.

(5) A description of the appraisal technique used, i.e., market approach, income approach, or cost approach, in sufficient detail to explain clearly to the landowner the process by which his property was valued. Thus, as an illustration, where the market approach was used, the explanation should include the number of comparable sales used, their general location and type, the factors considered in adjusting sales of subject property, and any other information which would help the landowner understand what was done to value his property. A statement that comparable sales of similar properties were examined without more explanation is not sufficient. Similar information should be given when any other appraisal technique is used. Unusual cases will require a more detailed explanation.

(6) An identification of land classification categories (do not show acreage breakdown).

(7) If only a portion of a property is to be acquired, an apportionment of the total estimated just compansation for the partial acquisition between:

(i) The amount representing the just compensation for the real property to be acquired;

(ii) The amount, if any, representing severance damages to the remainder, together with a brief narrative description of the cause thereof; and

(iii) In the event "off-setting benefits" are involved, these must be shown, along with a narrative explanation and the landowner shall be given a "person-to-person" explanation by the negotiator.

(8) If the property contain a dwelling, the value of said dwelling and homesite shall be set forth separately, with the statement that this figure will be used in calculating housing relocation benefits under title II of Pub. L. 91-646.

(9) If any building, structure, fixture, or other improvement, comprising part of the real property, has been identified as being owned by a tenant who has the right or obligation to remove it at the expiration of his term, the amount of the value of such building, structure, fixture, or other improvement, being the greater of:

(i) The amount which the tenant's improvement contributes to the fair market value of the real property to be acquired; or

(ii) The fair market value of the tenant's improvement for removal from the real property. The basis of such amount shall be included.

(c) Appraisal reports or the appraiser's analysis (complete breakdown of principal value elements) will not be revealed by the negotiator unless specifically authorized. Cases involving property for which the highest and best use cannot be definitely established, and to which the exceptions mentioned in paragraph (a) of this section do not apply, will be reported to HQDA (DAEN-REA) WASH DC 20314 for specific instructions. If the land is being donated, initial offers are not necessary, and the appraisal will be significant in negotiations only when considering the conditions under which the donation is made as, for example, an agreed valuation for tax purposes. Negotiations will be based on current market values, which normally means that last offers will be based on appraisals not over six months old. Exceptions will be required in instances of rapid escalation of values when the appraisal is quickly outdated or in instances of a relatively static market or other condition resulting in a minimal change in property values. In such cases an explanation will be necessary.

(d) *Exceptions*—(1) *Corps Employees.* If an employee of the Corps of Engineers has a direct interest in a tract of land being acquired by the Corps for public use, the tract will be acquired by condemnation. In cases of this nature, appraisal reports should be prepared, reviewed and forwarded together with a declaration of taking, with the condemnation assembly. The negotiator's report, of course, will not be included. The Department of Justice will be requested to handle all further matters pertaining to settlement or trial of the case. The Department of Justice has agreed to accept full responsibility for negotiations and approval of settlements or awards in such cases, without contacting any Corps personnel other than the owner of the interests being acquired.

(2) *Members of Congress.* Since, under 18 U.S.C. 431 and 432, members of Congress who hold interests in land that is required for project purposes cannot contract for sale of such interests to the Government, these interests will also be acquired by condemnation. Negotiations for acquisition by purchase or for settlement without trial cannot be conducted by officers or agents of the United States. The determination of just compensation must be made by judicial proceedings. Appraisal reports and the condemnation assembly should be prepared and forwarded as set forth in paragraph (d)(1) of this section.

(e) *Negotiating Guidelines.* (1) The negotiator should be thoroughly familiar with the Division and District negotiating guidelines and should study the background data of the project, consisting of the authorizing act, survey report, project document, design memoranda, etc.; the applicable appraisal reports; tract ownership data; preliminary title certificates; and other related material. He should be entirely familiar with the project and the owner's individual property before initiating negotiations.

(2) The owner shall be provided with available brochures which explain the project and the Pub. L. 91-646 benefits, together with the written statement and summary required by § 644.83(b). The negotiator should explain to the landowner the Government's requirement for the land, the amount of land required, the estate(s) to be acquired, the terms and conditions of the Government's contract form, and the fact that relocation assistance benefits may be available. He should furnish the landowner a copy of a map indicating the boundaries of that portion of his land to be acquired, where the entire ownership is not being acquired or where different estates are being acquired in the same ownership, specifying the estate in each area.

(3) Negotiations will be continued in an effort to obtain acceptance of the Government's offer or a reasonable counteroffer from the landowner, or until it is definitely determined that such a counteroffer will not be forthcoming. It is not intended that negotiations be continued until an unacceptable counteroffer is finally obtained. However, in an effort to obtain a reasonable counteroffer above the Government's estimate, the negotiator will, if necessary, take the initiative in suggesting a series of prices within a range which, in accord with the guidelines discussed in § 644.84, has been predetermined to be reasonable.

(4) The interest of both owners and tenants must be considered and pro-

tected. The tenant is a proper party to the transaction, and every effort must be made to obtain the consent of the landowner and tenant as to the price to be paid to the tenant for his leasehold interest. This can be accomplished by the tenant's execution of ENG Form 1564, Consent to Offer to Sell Real Property, which shall then accompany the owner's offer to sell. In cases where the tenant executes this form, payment for the tenant's interest can be made to him in the closing of the purchase transaction. This procedure will be followed whenever possible. An exception is permitted in those cases where the landowner and tenant prefer to handle the matter as a private transaction between themselves. In such cases, it should be determined that a satisfactory agreement has been made by the landowner and tenant. Consideration should be given to any interest which the tenant may have in growing crops. This procedure is also applicable to any third party having an interest in the property, except through severance of a subsurface estate.

(5) Negotiations with landowners will be conducted in a fair and courteous manner. The negotiator must not, under any circumstances, resort to coercion or threats of condemnation.

(6) The negotiator has no authority to obligate the Government in any manner beyond the contract form. He must refrain from oral promises or understandings and include all terms and conditions in the contract form.

(7) Although appraisal reports cannot be made available for inspection by a landowner, the various elements of value considered by the appraisers may, and should, be discussed with the landowner to satisfy him that all elements of compensable values and damages have been considered in arriving at an overall value for the property being acquired. Care will be exercised during any discussion not to reveal specific amounts related to any elements considered in the appraisal, except the acquisition cost assigned to the dwelling for purpose of calculating replacement housing payment under section 203, Pub. L. 91-646.

(8) Any interest in a tract of land sought to be acquired, or any type of relationship with the owner, disqualifies the negotiator from participating in negotiations for the acquisition of that particular tract.

(9) An appraiser is not, under any circumstances, permitted to negotiate for the acquisition of a tract of land for which he has prepared the appraisal or reviewed it as reviewing appraiser.

(f) *Discussions With Landowners.* In order to avoid the creation of negotiating patterns, and keeping in mind that counteroffers must be justified as being just and reasonable, discussions with landowners should be conducted without disclosing the extent of the delegations and redelegations of authority to accept counteroffers. However, during negotiations on individual tracts, the landowners must be advised that, in the event of condemnation, the deposit will be in an amount no less than the approved appraised value, since the question of value cannot be resolved by negotiations. It must further be made clear that this advice is not in the nature of a threat, but is an explanation of the statement of policy directed by the Congress and the law. The negotiator will also inform each owner that offers and counteroffers made during negotiations are made without prejudice in the event of condemnation. The negotiator will make a notation on the Negotiator's Report to the effect that he has so informed the owner.

(g) *Obtaining the Written Counteroffer; Preparation of Negotiator's Report.* If the negotiator considers that a counteroffer in excess of the approved appraised value is in the amount which should be considered for acceptance, the counteroffer will be reduced to writing on ENG Form 42, Offer to Sell Real Property, or on ENG Form 2970, Offer to Sell Easement, and be properly executed by the landowner. In such cases, a complete written record of negotiations with respect to each tract or ownership, as appropriate, will be maintained by means of ENG Form 3423, Negotiator's Report, Part I. This record will state the chronological history of negotiations, all elements considered in evaluating the landowner's final counteroffer, and the justification for such recommendation in accordance with § 644.84. The justification will be fully recorded in ENG Form 3423A, Negotiator's Report, Part II, which is a separate page of this report, and which will be removed in the Office of the Chief of Engineers prior to submitting the counteroffer assembly to higher authority for approval. Final action on the counteroffer, either by the Secretary of the Army, the Chief of Engineers or under the delegated authority to Division and District Engineers, will be entered on this record as soon as that information is available.

§ 644.84 Counteroffers.

(a) *Consideration of Counteroffers.* In negotiations with landowners, if agreement cannot be reached with a landowner as to the purchase price established by the appraisal, the lowest price demanded by the landowner may be considered by the Division and District Engineer, and the Chief of the Real Estate Division, on the basis of the following factors:

(1) *Variations in Appraisals.* In the usual case, the Corps will have the opinion of only one appraiser with respect to the market value of the particular tract of land. It must be recognized that the opinion of a second equally competent appraiser might be higher or lower than that of the appraiser who appraised the property. Hence in considering counteroffers of landowners, Division and District Engineers should keep in mind that two equally competent appraisals may reflect reasonably divergent opinions of value as to the same property. Instances requiring two appraisals are covered in § 644.82(d).

(2) *Built-in Costs, Prior Counteroffers, Settlements and Liability Risks of Proceeding to Trial.* It is recognized that there are certain Government administrative costs and liability risks involved when property is condemned by the United States and the land value is judicially determined. These items are definite in character but the attendant costs will vary. "Built-in" costs of proceeding to trial include, but are not limited to, the following items: Salaries of all Government personnel participating in trial preparation, pre-trial hearings, and the actual trial; cost of an additional appraisal(s); witness fees of contract appraisers employed by the Corps of Engineers or the Department of Justice; travel costs of all Government personnel and consultants participating in trial preparation, pre-trial hearings, and the actual trial; and cost of preparing trial documents and exhibits. Consideration should also be given to prior counteroffers which have been accepted and settlements approved prior to trial. "Liability risks" of proceeding to trial are the amount of the anticipated award over and above the appraised value, taking into consideration probable testimony on behalf of the Government and the landowners, as well as the history of condemnation awards in the Federal court jurisdiction in which the lands are located, and the amount of interest on a deficiency judgment which would result from the anticipated award. Serious consideration of the above factors may justify a recommendation for authority to accept a counteroffer which otherwise would appear to liberal.

(3) *Non-Compensable Elements of Value.* Elements of value based on consequential damages or speculative values, as defined by the Federal courts, may not be recognized in considering a landowner's counteroffer. However, even though a landowner's counteroffer might include non-compensable items of value, favorable consideration of the counteroffer may be given if it can be justified on the basis of variances in appraisals, built-in costs, and liability risks of proceeding to trial.

(4) *Value of Reserved Items.* The salvage value of improvements and the value of crops and/or timber reserved by the landowners, as provided in § 644.86 (g), (h), and (i), will not be included in the amount of the counteroffer in determining the excess of counteroffers over appraised values when applying the dollar and percentage limitations in the delegations of authority to Division and District Engineers for acceptance of counteroffers. The determination of the excess will be made on the basis of the appraised value of the interests being acquired (including the value of the reserved items) compared to the cash

payment which will be made to the landowner if the Government accepts his counteroffer. However, this method of analyzing the counteroffer is intended for use only in determining the limitations of authority. The overall transaction must be in the interest of the United States and not afford an unwarranted windfall to the vendor.

(b) *Application and Limits of Delegated Authority.* The negotiating procedures outlined herein will apply to all acquisitions by the Corps of Engineers for the Army (military and civil), Air Force, Department of Energy (DOE), National Aeronautics and Space Administration (NASA), and other Federal agencies which utilize the services of the Corps for acquisition of real estate. Delegations of authority to Division and District Engineers and to the Chiefs of their Real Estate Divisions to accept offers in excess of the appriased valuation have been made. Offers which do not exceed the approved appraised value may be accepted by authorized Division and District personnel regardless of the amount. Other offers will be handled as outlined in the paragraphs which follow.

(c) *Exercise of Delegated Authority.* The approval of a counteroffer over the appraised value, but within the authority redelegated to Divisions and Districts, will be evidenced by the Division Engineer, the District Engineer, the Chief of the Real Estate Division, or the incumbent of the position to which redelegations have been made, in one of the following manners:

(1) Manually accepting, on behalf of the United States, the offer to sell, as provided in § 644.87; or

(2) Manually executing a dated notation of approval of the purchase price, to be placed in the tract file, preferably on the original of the Negotiator's Report (§ 644.83(g)).

(d) *Submission of Counteroffers to the Chief of Engineers.* Recommendations for the grant of authority to accept counteroffers which are considered reasonable, but which cannot be accepted by the Division Engineer, the District Engineer, or the Chief of the Real Estate Division, within the limitations of delegated authority, will be submitted to HQDA (DAEN-REA) WASH DC 20314 for consideration. Negotiator's Reports, prepared in accordance with § 644.83(g) will accompany this submission; the contents thereof need not be repeated in the transmittal letter or in forwarding indorsements. The assembly will consist of the forwarding correspondence and the Negotiator's Report, with any additional material needed to support the recommendation of the Division and District Engineer. An analysis should be made of this offer as compared with other counteroffers accepted for the project, as well as with results in condemnation cases settled before trial. Signed offers will not be forwarded unless they contain deviations requiring approval by the Chief of Engineers. Appraisal reports are helpful and may be necessary reference for proper consideration of the recommendation. In the event the appraisal report was approved by HQDA (DAEN-REA), the forwarding letter should refer to the approval correspondence and data. It will not be necessary to enclose copies of the appraisal report. Where only a portion of an ownership is required, information should be furnished in the Negotiator's Report or in the transmittal correspondence (1) as to whether or not the remainder portion is considered to be an uneconomic remnant and (2) if so, as to whether or not an offer was made to acquire the entire property. Further, a statement is required as to whether or not it is considered that the acquisition will have any adverse effect on the acquisition of the remaining land required for the project.

§ 644.85 General negotiation procedures.

(a) *Provisions of Military Construction Appropriation Act.* (1) Section 108 of the Military Construction Appropriation (MCA) Act of 1978 (Pub. L. 95-101) provides that no part of the funds provided in the Act shall be used for purchase of land or easements in excess of the value as determined by the Corps of Engineers, except:

(i) Where there is a determination of value by a Federal Court; or

(ii) Purchases negotiated by the Attorney General or his designee; or

(iii) Where the estimated value is less than $25,000; or

(iv) As otherwise determined by the Secretary of Defense to be in the public interest.

(2) The above wording, except for paragraph (a)(1)(iv) of this section, constitutes a limitation on accepting or submitting a recommendation for approval of a counteroffer in excess of the appraised value. Paragraph (a)(1)(iv) brings military acquisition within the general acquisition policy required under Pub. L. 91-646. Future MCA Acts should be carefully examined to determine if any limitations on acquisition have been restored.

(b) *Local Cooperation Projects.* The participation of a non-Federal agency in a federally-assisted project will be in accord with section 221 of Pub. L. 91-611 and Subpart J (to be published). Acquisition of real property by a non-Federal agency will be in accord with sections 210 and 305 of Pub. L. 91-646 and this chapter.

(c) *Negotiations on the Basis of Ownership; "Package-Deal" Negotiations.* (1) Normally, negotiations for all interests in all tracts which are being acquired from one parent ownership will be negotiated at one time. These tracts will usually consist of all those to which the same basic tract number has been assigned. Exceptions may be made only where negotiations for some of the tracts in a series must be accomplished to obtain possession, or for other critical reasons. Piecemeal acquisition must be avoided if at all possible.

(2) When more than one tract is operated by the owner as a unit, negotiations should take place on the two or more tracts or groups of tracts, whether or not they bear the same basic tract number.

(3) In cases where an owner insists on a "package-deal" negotiation on all tracts in the same ownership, or having at least one common owner, the negotiations will be considered as one transaction.

(4) Tracts which are in the same ownership, but which are not operated as a unit, should, unless the owner desires otherwise, be negotiated separately, on the basis of the separate appraisals which would be prepared in this type of case.

(5) Under paragraphs (c)(1), (2), and (3) of this section, the limitations of authority to accept counteroffers will be applied to the entire transaction.

(d) *Acquisition by Condemnation if Negotiations Fail.* As soon as it is determined that a satisfactory agreement cannot be reached after full consideration of all reasonable counteroffers received, action will be promptly taken to acquire the property by condemnation proceedings, including the filing of a declaration of taking, in order to make funds available to the landowner and to maintain the project acquisition schedule. The landowner should be advised in writing, sufficiently in advance of the submission of the condemnation assembly to the Chief of Engineers, that condemnation proceedings will be recommended and the reason therefor. Condemnation assemblies will include copies of the Negotiator's Reports or other written records of negotiations. The estimated compensation to be deposited in the registry of the Federal District Court with the filing of a declaration of taking will be in the amount of the approved appraisal.

§ 644.86 Exceptions and reservations.

(a) *General.* Prior to the enactment of Pub. L. 91-646, the Corps encompassed a very generous policy of priority leasing with respect to former owners and tenants, in order to ease the burden of people who had to relocate because of the Corps' projects. Recognizing the inadequacies of the well-intentioned attempts by acquiring agencies to make whole the former landowner or tenant, the Congress enacted Pub. L. 91-646 which was approved on January 2, 1971. It would appear that the Congress intended that such law provide for the fair and equitable treatment of persons who are displaced, without having to rely on interim measures, such as priority leasing, to ease the inevitable relocation. In House Report 91-1656, the Committee on Public Works of the House of Representatives noted the likelihood that adequate housing may not be available readily and indicated this as its reason for including the provision in the law that satisfactory replacement housing must be available before displacement. In view of this, it is incumbent on the District Engineer to be opportune in seeking out replacement housing and to be judicious in the early relocation of owners and tenants before market changes eliminate any available supply of replacement homes. It is also essential that the District Engineer be diligent in providing the required relocation assistance advisory services and benefits authorized by the law.

(b) *Possession by Government.* It will be the objective of the District Engineer to have the premises vacated and to cause unneeded improvements to be removed at the earliest practicable date and conform to the Congressional intention expressed above. In addition to the above, reasons for this objective are:

(1) To provide for the expeditious payment of benefits to former owners and tenants;

(2) To complete administration of the actual relocation of owners and tenants in a timely manner;

(3) To avoid maintenance and security problems with respect to acquired improvements;

(4) To prevent vandalism, trespassing and poaching with respect to acquired improvements;

(5) To avoid any implication that former owners or tenants may be permitted to remain indefinitely on the federally acquired property;

(6) To cause land to be leased on the basis of the most practicable size and configuration rather than on the basis of the size of the units acquired;

(7) To permit the general public to bid for the lease of federally owned land rather than restricting the privilege of leasing to the former owner or tenant; and

(8) To avoid a backlog of incomplete actions when construction or flooding is imminent or the land is otherwise required.

(c) *Possession Reserved to Former Owners and Tenants.* It is considered that the policy of granting priority leases to former owners and tenants has been overridden by the enactment of Pub. L. 91-646. Accordingly, this policy is being phased out, and where applicable, the acquisition agreement will set forth the dates agreed upon for the vacation of the premises by the owner and tenant without commitments, express or implied, as to the leasing of the premises after such dates. Procedure for providing for vendor's continued possession after the Government's acquisition is covered in paragraph (l) of this section.

(d) *Outstanding Rights.* (1) When the United States is acquiring title subject to outstanding rights, the offer will differentiate between:

(i) Property which the vendor is excepting or rights which he is reserving and which are created for the first time; and

(ii) Rights which third parties have acquired in the past, generally referred to as outstanding rights in third parties.

(2) Exceptions or reservations of rights which the vendor may retain, without interfering with the construction or operation of the project, will be set forth in the offer and deed by a clause following the description, beginning with the words: "Excepting * * *" or "Reserving * * *." Any other outstanding rights, subject to which the United States is acquiring title, held by third parties will be set forth in the offer and deed by a clause, following the description, beginning with words, "Said premises are conveyed subject to * * *." Negotiations with the surface owner will include the owner's interest in the subsurface, unless acquisition of a lesser interest has been authorized by directive or specific approvals. These negotiations will not include interest severed and outstanding in third parties by purchase or lease, unless the surface owner agrees to remove the outstanding interest or agrees to obtain a subordination from the holder of the outstanding interest if that is consistent with the acquisition plan. If negotiations with the surface owner are successful, an Offer to Sell will be obtained, reciting the outstanding interest in the "Subject to" paragraph of the form, unless the surface owner has agreed to remove the outstanding interest (or obtain a subordination, if appropriate), in which case the Offer to

Sell must recite specifically that the surface owner is assuming this obligation. In order to carry out the requirements of this paragraph, the title evidence must be examined prior to negotiations or, in any event, prior to acceptance of the Offer to Sell.

(e) *Right to Repurchase Prohibited.* In no case will an offer be obtained in which the vendor reserves the right to repurchase the property. Such a reservation would be contrary to the Federal Property and Administrative Services Act of June 30, 1949, 63 Stat. 377, 40 U.S.C. 471, et seq.

(f) *General Reservation Guidelines.* (1) Reservations of the right to remove crops, timber, buildings, and improvements during a specified period will not be permitted without express approval of the Division or District Engineer on civil works projects, the Army or Air Force using service on military projects, or the Federal agency, if other than the Army or Air Force, for which the land is being acquired.

(2) At the time of the approval of the acquisition by the Chief of Engineers, a determination will generally have been made as to whether subsurface rights and/or water rights will be acquired or left outstanding. Acquisition will be on the basis of such determination and as outlined below. Lands will be acquired subject to minerals, oil and gas rights or other similar interests severed and outstanding in third parties by purchase or lease and as approved by the Chief of Engineers.

(3) Where it is not possible to acquire or subordinate an outstanding interest by negotiation and the interest will not interfere with the operation of the project, consideration may be given to obtaining a waiver from the Office of the Chief of Engineers on the basis of taking a calculated risk rather than resorting to condemnation (paragraph (k) of this section). Waivers will be considered on a tract-by-tract basis or on a project segment basis. Since such waivers involve several elements of the Office of the Chief of Engineers (Civil Works or Military Construction as well as Real Estate), the basis for the calculated risk must be fully explained.

(4) Concurrently with the negotiations to acquire from the surface owner, negotiations should be opened with the owner of the subsurface rights or other interests severed and outstanding in third parties by purchase or lease and required for the project, unless these interests are held in "block ownership." Block ownership exists where a person, corporation, or other entity owns subsurface or other interests in connection with more than one surface tract and in sufficient amount for the entire interest holding to have added value, for operational or other reasons, because it is in a block ownership. In other words, block ownership exists when the acquisition of a part of the block would require the assessment of severance damage, even if the value of the interest or the amount of the severance damage would be in a nominal amount. On this basis, subsurface or other interests need not be contiguous to constitute a block ownership. Block ownership interests will not be acquired (or subordinated) piecemeal.

(5) Acquisition of the required interests, including subordination, held in block ownership should be started as soon as the extent of an operational unit is determined. As stated in paragraph (f)(4) of this section, all interests in a tract of land should be acquired at one time or as close in time as possible. Dual acquisitions of entire areas, one for surface rights and then for subsurface interests, should be avoided and acquisition of separate interests should be scheduled to coincide.

(g) *Reservation of Buildings and Improvements.* The reservation by vendors of the right to remove buildings and improvements will be permitted under the following conditions:

(1) Where the Division or District Engineer, in civil works projects, the using service in Army and Air Force projects, or the Federal agency, if other than the Army or Air Force, for which the land is being acquired, has determined that they will not be needed for the purpose of the project;

(2) The consideration to the Government for the reservation will be an amount negotiated at not less than the appraised salvage value of the

building and improvements which are reserved, and such amount will be deducted from the negotiated price at the time of negotiation prior to execution of the offer;

(3) Where a reservation is permitted, the following clause will be inserted in the offer, following the description of the land:

> Excepting and reserving to the Vendor the right to remove (enter description of buildings) on or before ——— 19 —, which the Vendor agrees not to relocate on other land to be acquired for the project; provided, however, that, in the event that the said buildings and improvements are not completely removed on or before said date, the right of removal shall terminate automatically, and the United States shall have a good and indefeasible title to said buildings and improvements which remain without notice to the Vendor; and provided further that, in the event said buildings and improvements are relocated on other land to be acquired for the project, the United States shall have good and indefeasible title to said buildings and improvements without notice or further compensation to the Vendor.

The date on which the buildings or improvements must be removed must be fixed so that there is no interference with contruction or carrying out the mission of the project. The date for the removal should allow a reasonable time for removal of the improvements, usually not more than 90 days, except that for valid reasons the Division or District Engineer may grant an extension of time for removal. The right to remove such buildings cannot be prolonged indefinitely and certainly such right cannot survive the limited right of possession reserved to former owners and tenants as provided in paragraph (c) of this section.

(h) *Reservation of Growing Crops.* (1) The reservation by the owners of the right to harvest and remove growing crops should be encouraged in order to conserve land acquisition funds and to avoid the costs incident to disposal of crops by the Government, whenever there is a probability that possession of the land will not be required prior to the harvest season.

(2) Where a reservation is permitted, the following clause will be inserted in the offer, following the description of the land: "Reserving to the vendor the right to harvest all of the growing crops located on the above described land on or before ——— 19—. In the event the crops are not harvested on or before said date, the right of removal shall terminate automatically, and the United States shall have a good and indefeasible title to said crops, without notice to the vendor." the date on which the crops must be removed must be fixed so that there is no interference with construction or carrying out the mission of the project.

(3) The consideration to the Government for the reservation will be an amount not less than the appraised value of the crops as of the date of surrender of possession as disclosed by an approved appraisal report, and such amount will be deducted from the purchase price at the time of preparation and execution of the offer.

(4) Where a tenant has an interest in growing crops, the value of his interest must be fixed by use of ENG Form 1564, Consent to Offer to Sell Real Property, which provides that the value of the tenant's interest, as agreed upon by the landowner and tenant, will be paid from the purchase price for the land. The use of this form not only protects the tenant but, in addition, provides a simple method for extinguishing rights which the United States is legally bound to recognize. Where a tenant wishes to reserve the right to remove crops, it must be done in the name of the landowner, and in like manner. To accomplish the foregoing, any other form is satisfactory, in lieu of ENG Form 1564, as long as closing requirements are satisfied.

(i) *Reservation of Timber.* (1) The reservation of the right to remove timber by vendors will be permitted only with the express approval of the Division or District Engineer, with the concurrence of the using service in cases other than civil works projects of the Corps of Engineers.

(2) Reservation of the right to remove timber will be handled in substantially the same manner as that described for the reservation of buildings and improvements. If owned by a third party, ENG Form 1564 will be used in the same manner as for crops unless

the timber interests are held in block ownerships. The consideration to the Government for the reservation will be an amount not less than the appraised value of the timber, giving full weight to any unusual difficulty in harvesting and transporting which are caused by the size, shape and location of the stand reserved, time limitations for removal, clearing requirements over the above those normally involved in prudent harvesting, and similar factors. If necessary, the stand reserved will be re-appraised on this basis. An amount not less than this appraised value will be deducted from the purchase price at the time of preparation and execution of the offer.

(3) Where a reservation is permitted, the following clause will be inserted in the offer following the description of the land: "Reserving to the vendor the right to cut and remove on or before ——— 19—, all trees in excess of ——— inches in diameter at breast height (DBH) located on the above-described land. In the event the timber is not removed on or before said date, the right of removal shall terminate automatically, and the United States shall have a good and indefeasible title to said timber, without notice to the vendor."

(j) *Coal, Oil, Gas or Other Minerals.* Acquisition of land or interests therein for project purposes will usually include the subsurface as well as the surface, except in areas where minerals have more than a nominal value. When the mineral, oil and gas rights have an identifiable value or are the subject of separate estates in the land, such mineral, oil and gas rights will not be acquired except where the development thereof would interfere with project purposes, but mineral rights not acquired will be subordinated to the Government's right to regulate their development in a manner that will not interfere with the primary purposes of the project, including public access, and not be inimicable to the environment. This is covered in more detail in Subpart A. It is essential, however, in many acquisitions that the subsurface rights be acquired. In others, where these rights need not be extinguished, provision must be made in the offer the deed to subordinate such rights to project requirements, by excluding the owners of such rights from the area, or limiting exercise of such rights so that they will not interfere with the primary purposes of the project, including public access. The following guidelines are applicable in these cases:

(1) Where it has been determined that subsurface rights in the vendor, or outstanding in third parties, must be acquired, extinguished or subordinated, such arrangements will be made in the course of obtaining an offer for the surface or subsurface interests. Where the negotiations for acquisition, extinguishment or subordination of subsurface rights will be delayed, and it is considered advisable to proceed with surface acquisition to keep pace with project requirements, appropriate recommendations and justification will be submitted to HQDA (DAEN-REA) WASH DC 20314 for approval.

(2) If the owners of the surface and subsurface rights are agreeable, the separate interests can be acquired in a single transaction by use of ENG Form 1564, Consent to Offer to Sell Real Property. This method is the most desirable one, and, if used, the purchase price in the offer will cover both the surface and subsurface interests and the offer will not be taken "subject to" the subsurface rights.

(3) Subordination of the subsurface interest based upon the value of the minerals in place and which will allow continued production by the mineral owner or lessee must be pursuant to such terms as will safeguard the Government's interest and preclude a windfall to the mineral owner or lessee. Value of the minerals in place will not exceed the recoverable portion of said minerals using agreed upon production methods. See Subpart A for detailed treatment in the section pertaining primarily to Real Estate Design Memoranda.

(4) When the third-party owner of subsurface rights refuses to enter into an agreement as contemplated in paragraph (j)(2) of this section, the title to the surface estate may be acquired separately, and the subsurface rights outstanding in third parties acquired as a separate transaction. The offer for the acquisition of the surface

estate will provide for the conveyance of all interests of the surface owner in and to the subsurface estate, as well as all surface rights, and provide for taking "subject to" the subsurface rights outstanding in third parties. In such cases, the negotiations described in § 644.83 will be conducted on the basis of the approved appraisal, less the appraised value of the outstanding subsurface rights.

(5) Where it has been determined that the subsurface rights and interests therein need not be acquired, but the owners of such rights must be excluded from the area, and the owner of the surface is the owner of the subsurface estate, the offer will contain a clause providing that he relinquish, for the period that title to the tract is vested in the Government, all rights to enter upon the lands covered by the offer or that he will limit entry and exploration in a named manner so as not to interfere with the operation of the project. If third parties own subsurface rights or interests, a similar waiver of the exercise of such rights must be procured from all third parties having any interest in the subsurface estate, whether as lessees or assignees. The waiver by third parties must be obtained at the time the offer is procured for the surface estate, unless these subsurface interests are held in block ownership.

(k) *Title Exceptions—Administrative Waivers.* (1) A distinction should be made between those title defects, objections, liens or encumbrances which, if not eliminated, might possibly defeat or adversely affect the Government's title, and those interests in the property owned by parties other than the grantor. All encumbrances, defects, and outstanding interests which cannot be waived under paragraphs (k) (2), (3), and (4) of this section must be eliminated or a waiver of the defect secured from the Attorney General.

(2) Title may be taken subject to an outstanding third party interest which has been administratively waived. Requests for administrative waivers shall be submitted to HQDA (DAEN-REA) WASH DC 20314 for consideration, together with recommendations from Division and District Engineers. The recommendation for waiver should be coordinated with the using agency, if other than Department of the Army land (military or civil works), and should be accompanied by a certificate signed by the Chief, Real Estate Division or the Chief Appraiser, certifying that the outstanding interest has no contributory value to the estate being acquired and will not interfere with the purpose for which the property is being acquired.

(3) It has previously been administratively determined that all lands for Department of the Army (military or civil works) or Air Force projects may be acquired "subject to existing easements for public roads, public highways, public utilities, railroads and pipelines," and "to the reservations, exceptions and any other outstanding rights contained in or referred to in patents issued by the United States," and also "to water rights, claims or title to water, if any, or other similar title exceptions." A decision as to whether any of these exceptions should be eliminated is the responsibility of the Division or District Engineer, after coordination with the using service if other than the Department of the Army. If such interests are to be left outstanding, they should be included in the "subject to" clause of the Offer to Sell.

(4) Offers to Sell may be accepted subject to subsurface mineral interests owned by third parties in accordance with § 644.86(d). In such case, the "subject to" clause of the Offer to Sell should recite the specific interest which is being left outstanding. Where it is not possible to acquire or subordinate an outstanding subsurface interest by negotiations and the outstanding interest will not interfere with construction, operation or maintenance of the project, consideration may be given to obtaining a waiver from HQDA (DAEN-REA) WASH DC 20314 on the basis of taking a calculated risk rather than resorting to condemnation. Such waivers may be considered on a tract-by-tract, segment-by-segment, or project basis. Where a number of small mineral interests in a project are to be recommended for waiver, it is preferable that the recommendation be submitted on an entire project or group of segments at one

time. Such a recommendation should specifically identify the subsurface mineral interests which are to be left outstanding, together with the estimated value of each interest, and should be accompanied by a map(s) on which the areas affected by the outstanding interests have been outlined. The basis for the calculated risk should be explained fully.

(l) *Possession Reserved to Vendor.* (1) The objective in acquisition is to obtain possession for project purposes at the earliest practicable time. It is recognized, however, that there are occasions when possession by the Government may be delayed and provision must be made for continued possession by the former owner in order to meet the requirements of the Government's acquisition policy and to further soften the impact of the Government's acquisition. The retention of possession will enable the owner-occupant of farm land, or residential property, to receive his purchase money and remove improvements reserved by him, and permit occupants who may be former owners or tenants the privilege of harvesting growing crops and sufficient time to relocate to other locations. Accordingly, the Division or District Engineer may make provision for the former owner, occupant, and/or his tenant(s) to remain in possession of the land under the terms and conditions as follows:

(i) If the tract is to be acquired by direct purchase, the provision for retention will be written into the offer (ENG Form 42, ENG Form 2970, or ENG Form 1564) and will read substantially as follows: "Notwithstanding the provisions of paragraph —— of this offer, (and/or consent to option) the occupant (vendor and/or his tenant) now in possession of the property, in consideration of the protection and maintenance of the land, buildings, and structures, and protection of the property against loss by fire, waste, or other causes, to which the occupant hereby agrees, reserves the right to occupy the property until ———. Such occupancy is subject to revocation by the (Division) (District) Engineer at any time by giving —— days notice in writing to the occupant if possession of the property is required by the United States; and provided further that the vendor-occupant or his tenant will remove no improvements or timber unless otherwise provided herein."

(ii) When the tract is to be acquired by condemnation, the circumstances of the right to remain in possession, which has been established as hereinafter set forth, will be fully described in the correspondence forwarding the condemnation assembly to HQDA (DAEN-REA-C) WASH DC 20314. The retention of possession without payment of rent is directed to the benefit of the occupant of the property with some property maintenance consideration to the Government. This procedure will not be used to permit non-occupant owners a means of retaining possession without payment of rent and at the same time collect cash rents or unreserved crop rents from tenants.

(iii) When the land being acquired is utilized by the owner and/or tenant for agricultural or related purposes, a period of possession may be allowed, if consistent with project requirements, to permit the crop owner to harvest growing crops, and to avoid abrupt dislocations. The period of possession reserved in the offer, or for which request for the order of the court is deferred in declaration of taking cases, should generally be co-extensive with the crop season or the date that, by custom in the community, leases of such properties ordinarily expire: *Provided, however,* That such period does not exceed 12 months from the date title vests in the Government. Reservation of possession or delay in entry of order of possession that will interfere with the Government's requirements for use of the land will not be allowed.

(iv) In the case of owner-occupied residential property other than farm residences, possession may be permitted for a sufficient time to allow orderly relocation, but no longer than 12 months after title vests in the Government.

(v) In connection with the acquisition of commercial, industrial, tenant-occupied residential property other than residences occupied by farm tenants, and special use properties, ordinarily the procedures of reserving possession to the vendor by a clause in the offer, or deferring the right to possession under a declaration of taking proceeding, should not be utilized. In such cases, after title vests in the United States, the continued possession of the property by vendor or tenant should be formalized by an outlease from the Government. However, if in the opinion of the Division and District Engineer a reservation for possession in the offer or deferral of order of possession is desirable in certain instances from a public relations standpoint or for other compelling reasons, such cases will be forwarded to HQDA (DAEN-REA) WASH DC 20314 for consideration.

(vi) The reservation of use and occupancy in the vendor and/or tenant under the terms of the offer or deferment of possession must be based on adequate consideration to the Government. It is anticipated, however, that items such as the vendor's maintenance of the land, buildings, and structures, his protection of the property against loss by fire, waste, or other causes, and the fact that his possession can be revoked within a short period of time, will, in most instances, offset any rental for the period of the reserved occupancy or deferred possession which might otherwise be due. However, if possession is reserved by the vendor in the acquisition of commercial, industrial, and special use properties, or other type of property having a potentially high income factor, the fair rental value for the period of reserved use or deferred possession must be deducted from the agreed purchase price.

(vii) Special provisions for protection of the Government, such as those appearing in ENG Form 1366, Department of the Army Lease—River and Harbor or Flood Control Property, will be added to the reservation clause in the offer in cases where, in the opinion of the Division or District Engineer, they are necessary or desirable. If the case is not to be closed by direct purchase, the letter to the vendor notifying him of the Goverment's intention to file a declaration of taking will set forth the fact that possession is to be deferred and for what period, and will contain a statement as to the Government's expectation that the vendor will properly maintain and protect the premises, and perform such other acts (or refrain from such acts) as deemed advisable by the Division or District Engineer. Both the letter of notice and the reservation clause in the offer will provide that the right to possession may be revoked on 30 days notice to the vendor.

(2) It is recognized that farmers may experience difficulty in finding substitute farms needed for their livelihood within one year, and other owners and tenants may encounter difficulty in relocating within one year. Therefore, the District Engineer, as an exception to the procedure in paragraph (l)(1) of this section may lease properties to former owners or tenants at the fair market rental value for up to one additional year where the circumstances justify such action, and, in such event, the record will contain the reasons justifying the action. Any occupancy by the former owner or tenant beyond 12 months from the date the property was acquired by the Government will be covered by a lease and will provide payment of the fair market rental value of the property leased.

(3) The District Engineer, through channels, may request the Chief of Engineers to grant exceptions to this policy where unusual circumstances warrant such consideration. In keeping with the intent of this action, it is hoped that such cases will be minimal in number.

(4) The following will apply with respect to advance land acquisition projects. Former owners and tenants whose properties were acquired *prior to August 1, 1972* will be allowed to remain on the property by lease on a year-to-year basis until the establishment of a land management use plan and thereafter, if the property is available for leasing, for a single five-year term. Former owners and tenants whose properties are acquired *after August 1, 1972* will be allowed to remain on the property by lease on a year-to-year basis until construction commences: *Provided*, The property is available for leasing. After construction commences, if the property is not immediately required for project pur-

poses, such former owners or tenants will be allowed to remain on the property by lease for an additional two years. Continued possession of properties acquired after the date construction commences will be governed by the procedure outlined in paragraph (l)(1) of this section.

(m) *Schools, Cemeteries, and Facilities of State and Local Governments.* ER 1180-1-1, Section 73, provides for the discretionary relocation by the Chief of Engineers of schools and other local governmental facilities, and acquisition of the sites under section 111 of Pub. L. 85-500. Section 73 will be followed in the acquisition and relocation of cemeteries. Where the school was formerly a part of an abutting tract, offers for the abutting tracts will contain a clause whereby the vendor or vendors agree to quitclaim all right, title, and interest whether vested or reversionary, in and to the school site in executing the deed to the United States.

(n) *Reservations Prior to Completion of Offer.* Where immediate possession of areas is necessary and is obtained by right-of-entry or the filing of condemnation proceedings, owners often wish to move, taking with them buildings and improvements, or wish to harvest timber or crops, prior to any offer by the Government for the sale of their land. This action is authorized only under the following conditions:

(1) Appraisals of all the land, buildings, improvements, timber, and crops of the particular tract are completed and approved.

(2) A determination is made by the Division or District Engineer that the buildings, improvements, and timber will not be needed, and the harvesting of timber or crops will not interfere with construction or operation of the project.

(3) ENG Form 1565, Agreement for Removal of Property, will be obtained from all persons having an interest in the property to be removed. This agreement will recite the amount which the owner is willing to have deducted from the value of the tract as a whole for the right of removal, which may not be less than the appraised salvage value of the buildings, improvements and timber, and the appraised value of the crops, as set out in paragraphs (g), (h), and (i) of this section.

(4) ENG Form 1565 will be obtained and accepted by the Division or District Engineer, or the Chief of the Real Estate Division.

(5) If an offer is obtained later, an appropriate reservation must be inserted in the Offer to Sell to reflect the prior agreement relative to reservations and removals of property and the agreed value of same.

(6) If it is necessary later to file a declaration of taking on the particular tract, a copy of the agreement (ENG Form 1565) will be forwarded with the correspondence transmitting the declaration of taking assembly for use of the Department of Justice in the court action. The agreement by its own terms will serve as a stipulation as to the amount to be deducted from the ultimate award for the right of removing buildings, improvements, timber or crops.

(o) *Loss or Damages to Improvements, Timber, or Crops*—(1) *Insurance Protection Against Risks.* The Government does not carry property insurance of any nature. Vendors, however, may be advised as to their liability for certain losses, and that insurance protection against such risks is optional. When buildings, improvements, timber, or crops on land being acquired by the United States are protected by insurance in effect when acquisition activities are initiated, the time and method of cancellation and negotiation for refund on premiums paid will be the responsibilities of the vendor. In order to avoid double payments to vendors, any amounts actually collected by vendors under the terms of the insurance policies for damage or loss occurring after acceptance of the offer by the Government will be deducted from the purchase price, regardless of when title is vested in the United States or the right to possession is exercised.

(2) *Fixing Liability*—(i) *Prior to Vesting Title in Government.* Buildings, improvements, timber, or crops on land acquired by the United States by purchase or condemnation remain the property of the vendor until title has been vested in the United States

by delivery of a deed of conveyance or filing of a declaration of taking, and loss or damage thereto caused by fire, acts of God, theft or vandalism, before such vesting of title, will be borne by the vendor, except as provided below.

(ii) *Possession by Government.* When the right to possession has been exercised by the United States under an accepted Offer to Sell, condemnation proceeding, or possession has otherwise been surrendered to and accepted by the United States, losses arising from damage to buildings, improvements, timber, or crops by fire, acts of God, theft, or vandalism will be borne by the United States. If, however, prior to vesting of title, the right to possession has been exercised, or surrender has been made and accepted only to part of the property, and the vendor continues to use buildings and/or to cultivate or harvest crops or timber, such loss will be borne by the vendor as to buildings, timber or crops retained.

(iii) *Title in Government.* After title has vested, losses to buildings, timber or crops not caused by the willful act or gross negligence of vendor will be borne by the United States; provided, however, that if the vendor continues in possession of buildings, timber or crops, after title has vested, and the deed, stipulation or order of court has reserved to the vendor the right to remove such buildings, timber or crops, loss or damage thereto, both before and after removal, caused by fire, act of God, theft, or vandalism will be borne by the vendor, only to the extent of the amount deducted from the purchase price, as provided in the deed, stipulation or order of court, for the right to remove.

(p) *Other Reservations.* The following rights may be reserved to the owner wherever such reservation will be to the financial advantage of the Government and it has been determined by the Division or District Engineer that the reservation of the rights will not interfere with the operation of the project. These rights may be reserved in the Offer to Sell and in the condemnation estate but only whenever mutual agreement between the owner and the Government concerning all phases of the acquisition except just compensation has been reached, or by stipulation for settlement of condemnation cases, subject to approval of revestment, if any, by DAEN-REA.

(1) *Rights-of-Way for Stock to Water.* Reservations of rights-of-way will be permitted for watering stock, in the case of bona fide livestock operations, such as dairymen and ranchers. Such rights-of-way will be limited to a reasonable width and will not be permitted in public access and use areas. The reservations will be so worded as not to require the owners to fence the rights-of-way, but to provide that if they elect to do so, they must provide gates at satisfactory intervals to permit crossing of the rights-of-way.

(2) *Rights-of-Way for Water Pipeline for Domestic Use.* Reservations of rights-of-way for water pipelines for domestic use (household, stock watering, garden, farm yard, but excluding irrigation) may be permitted by providing for the reservation of a temporary or permanent easement.

(3) *Rights-of-Way for Water Pipline for Irrigation Use.* (i) In areas where irrigation is commonly practiced, or is of paramount importance, owners of remainder or contiguous lands will be permitted to reserve a sufficient real estate interest to place water pipelines across Government-owned lands, in order to obtain financing for irrigation development and/or in order to be assured of being able to carry on irrigation operations. In "water rights" States (prior appropriation of water rights), the reservation of such interests will be permitted only to those owners who have established water rights from the State, or who may in the future obtain such rights. When irrigation is a project purpose, such reservation must be coordinated with the Bureau of Reclamation.

(ii) Under these circumstances, a landowner may be permitted to reserve an easement and right-of-way for a water pipeline and pumping unit across the land he conveys, by appropriate provisions in the offer to sell and in the deed to the United States. In "water rights" States, this reservation will be "for the exercise of established water rights, although no right to use water is created hereby." (This phraseology is to be incorporated in the reservation.) The reservation will also include any pertinent provisions considered essential by the Division or District Engineer, such as requirement to install the pipeline underground and at a specified depth.

(iii) Reservations of this nature will also be permitted in those cases where acquisition is by condemnation. In these acquisitions, the reservation may be recited in the complaint and declaration of taking, whenever full agreement except as to just compensation has been reached, or it may permitted later by stipulation.

(iv) When the project is located in an area in which the Bureau of Reclamation is developing, or planning to develop, irrigation districts or systems, prior coordination with the Bureau will provide that copies of all deeds and final condemnation judgments which recite reservations under this paragraph will be furnished to the local office of the Bureau. Thereafter, the Bureau of Reclamation will be responsible for supervising the exercise of the easements to insure compliance with Reclamation laws.

(v) Plans to provide for irrigation will be fully covered in the Real Estate Design Memorandum.

(4) Acquisitions in which these rights are to be reserved must, of course, be based on an appraisal of the fair market value of the estate to be acquired. Since the appraisal would probably be made originally on the basis that there would be no reservation, revision must be prepared whenever the reservation appears to be appropriate, to reflect the reduction in severance damages or other financial advantage accruing to the Government. Consideration of counteroffers which include proposals for these reservations by the landowner will be based on and compared with the appraised fair market value of the estate proposed to be acquired. Deposits with a declaration of taking will be based on the appraised fair market value of the estate to be acquired by the condemnation action.

§ 644.87 Preparation and execution of offers.

(a) *Fee Acquisition Offer Form.* The use of the latest revision of ENG Form 42, Offer to Sell Real Property, is required in all authorized projects, except in those cases where agreements with the landowners can be fully reflected in an executed deed, and where the provisions of §§ 644.81(c), 644.82(a), and 664.86 are not applicable or can be fully complied with without the use of an Offer to Sell. When an agreement as to terms has been reached with the owner, or a counteroffer has been received which will be considered for acceptance or submitted for consideration by higher authority, a draft of the offer will be prepared, with particular attention to the following instructions:

(1) No changes or interlineations in the printed portions of the offer form will be permitted, unless authorized by the Chief of Engineers, except where the words "general warranty deed" are changed to another form of deed.

(2) Insert legal land description of property to be acquired, or attach description by Exhibits to be identified on page 1.

(3) The word "none" should be inserted in the blank spaces following the first and third lines, respectively, on page 2 of the offer form when title is being acquired free and clear of all rights outstanding in third parties and the vendor is not permitted to except or reserve any right or interest in the property to be conveyed to the Government.

(4) Particular attention is directed to § 644.86, regarding exceptions and reservations and outstanding rights in third parties. No exceptions or reservations of crops, timber, buildings and improvements, subsurface rights, or any other interest will be incorporated in any offer to sell unless the required approvals have first been obtained.

(5) In any case where the offer form deviates from the standard approved forms or contains any conditions, exception, or reservation contrary to these instructions, the assembly will be forwarded to HQDA (DAEN-REA) WASH DC 20314 for consideration with the recommendations of the Division and District Engineer. This may be done at the same time a counteroffer is submitted to DAEN-REA in accordance with § 644.84(d).

(6) The landowner's name will be set forth in the offer in the exact way in which it appears on record.

(7) When it is necessary for a corporate agent, fiduciary, or any person other than an individual owner to execute the offer, satisfactory evidence of the authority to act for the owner must be attached to each of the copies of the Offer to Sell.

(8) Where it is necessary to attach sheets to the offer in order to fully set forth the terms of reservations, exceptions, or outstanding rights in third parties, such additional sheets must be securely attached and initialed by all parties signing the Offer to Sell.

(9) The name and address of the person or persons to whom notice of acceptance is to be sent must be accurately set forth. The address where the landowner can be reached after he vacates the property, if different from the address to which the notice is to be sent, should be obtained.

(b) *Submission, Acceptance, and Distribution of Offers to Sell.* (1) For each purchase transaction, the original offer and four copies will be signed by the landowner and spouse, if any. A copy (5th) will be left with the landowner when the offer is obtained.

(2) Division and District Engineers, the Chiefs of the Real Estate Divisions, and the incumbents of the position to which authority is delegated as provided in § 644.84(d) are authorized to accept offers to sell for the acquisition of land or interests in land and easements, licenses, permits, or similar acquisition instruments: *Provided,* The price set forth in the instrument is within their authority to approve or has been approved in writing by higher authority. The Division or District Engineer may also delegate to Project Managers (including the heads of any field offices with responsibility for real estate acquisition) authority to execute real estate instruments by which land or interests in land are acquired by agreement with landowners, provided the consideration set forth in the instrument is within the approved appraised value or has been approved as provided in § 644.84(c). Upon approval of the offer or other instrument requiring payment to the landowner, a determination that necessary funds are available, and acceptance of the instrument under the authority contained in this subparagraph, the instrument will be numbered in conformity with existing regulations and will immediately be distributed as follows:

(i) Original offers to sell will be retained at the Division or District for site audit.

(ii) Send signed copy to vendor as provided in paragraph (b)(3) of this section below.

(iii) Attached conformed copy to title assembly.

(iv) File signed copy with project records.

(3) Upon acceptance of the Offer to Sell, the Division or District Engineer will notify the vendor by transmitting a signed copy of the contract (accepted offer) to vendor by ENG Form 53, Notice of Acceptance of Offer to Sell Real Property.

(4) Upon acceptance of the Offer to Sell, the Division or District Engineer will notify the using service, in the case of military acquisition, that the Offer to Sell has been accepted and that the Government has "the right of immediate occupancy and use of the land," subject to the terms of the accepted offer. The land should be clearly identified to the using service.

(5) Instruments which do not provide for payments to landowners will be distributed in accordance with regulations governing such cases.

(c) *Easement Acquisition Offer Form.* (1) The use of ENG Form 2970, Offer to Sell Easement, is required for the acquisition of all types of easement estates, such as flowage, spoil, drainage, road, railroad, utility, restrictive or safety (Army and Air Force), clearance (Air Force), and other required easement acquisitions, except in those cases where agreements with landowners can be fully reflected in an executed deed, and where the provisions of §§ 644.84(b) and 644.86(d) are not applicable or can be fully complied with without the use of an Offer to Sell. Pages 1 and 2 of ENG Form 2970, containing the terms and conditions of the acquisition, are standard and need no modification. The tract of land in which the particular easement will be acquired will be described in Exhibit "A," and the easement estate will be set forth in Exhibit "B" to ENG Form 2970. Division Engineers are authorized to approve deviations in ENG Form 2970 in all cases where the easement does not cost more than $500: *Provided*, That any deviation from the estates listed in Figure 5-6 of EP 405-1-2, must have the prior approval of DAEN-REA. When easements are being acquired from a vendor from whom fee is also being acquired, ENG Forms 42 and 2970 may be combined into one instrument in order to complete the entire acquisition as one transaction.

(2) In the acquisition of easements for rights-of-way for access roads, utility lines, etc., which cross or encroach upon rights-of-way or property of railroad companies, public utility companies, cities, counties and States, ENG Form 893, License for Installations Upon Right-of-Way, may be accepted, at the discretion of the Division or District Engineer, provided it is determined that such companies, municipalities, counties, or States are not vested with authority to convey a perpetual easement and the granting of a license under the conditions recited in ENG Form 893 will protect the interests of the United States and grant sufficient use of the right-of-way or land for project purposes. Normally a license of this nature should be obtained for a nominal consideration. Occasionally it will be necessary to provide for the payment of a small fee to cover the licensor's engineering and administrative expenses. In such cases, the consideration for the granting of a license will not exceed $100. In cases where the licensor demands a consideration equal to the appraised value of the right to be acquired, consideration will be given to the acquisition of a perpetual easement by condemnation, if the licensor is not vested with authority to grant such an easement.

(3) The description of the tract over which an easement is being acquired should be prefaced by terminology similar to that of ENG Form 42 which makes the tract inclusive of the abutting owner's interest in contiguous roads and other easements, if any.

(4) Offer assemblies will be prepared, accepted, and distributed in the same manner as provided for fee acquisition, except that ENG Form 3422, Notice of Acceptance of Offer to Sell Easement, will be used.

(d) *Payment.* After acceptance and distribution of the offer assembly and the acquisition is ready for closing, payment will be made.

(e) *Cancellation of Contracts.* If, for any reason, it is necessary to cancel a contract for acceptance by the Government of the Offer to Sell, the cancellation will be effected by using ENG Form 1572, Agreement for Mutual Cancellation of Contract. Upon execution of this agreement by the landowner and the Division or District Engineer, or the Chief of the Real Estate Division, distribution of the original and copies of the agreement will be the same as for the accepted Offer to Sell.

(f) *Transfer of Tracts from Purchase to Condemnation.* If, at any time in the course of acquisition by purchase, it becomes apparent that acquisition by purchase will involve substantial delay or cannot be accomplished, action will be taken to acquire the land by condemnation.

(g) *Acquisition of Land by Donation.* (1) In cases where the acquisition of real property has been authorized and approved by donation, ENG Form 42, Offer to Sell Real Property, or ENG Form 2970, Offer to Sell Easement, will be entered into setting forth the terms and conditions of the donation and conveyance to the United States.

(2) The offer, when approved and accepted, will be distributed in accordance with paragraph (b)(2) of this section.

(3) Title clearance and closing of donation cases are processed in the same manner as any other fee or easement acquisition.

(h) *Vacation of Property by Landowners and Tenants*—(1) *Notice to Landowners.* From the inception of the project, landowners and tenants will be instructed to notify the Division or District Engineer or Real Estate Project Manager, in writing, as soon as they vacate their property; to turn in their keys whenever possible in order that the buildings may be kept under lock; and to keep the Division or District Engineer or Real Estate Project Office advised of any changes in address in order to expedite title clearance, payment, closing action, and the distribution of funds in condemnation proceedings. Landowners and tenants will be informed that, in order to protect their interests, they should not move from their property and that the Government will not require them to surrender possession until:

(i) They have received notice of acceptance of an offer granting the Government the right of immediate possession; or

(ii) They have been served notice of the filing of a condemnation proceeding by which the Government has obtained the right of possession.

(2) *Complete Appraisals Prior to Vacation.* Where an offer is accepted or a declaration of taking is filed, the individual tracts will have been surveyed and appraised. In condemnation proceedings for possession, there may be cases in which individual tract surveys and appraisals will not have been completed at the time the condemnation proceeding is filed. In such cases, landowners and tenants will not be required to surrender possession, and buildings and improvements will not be removed or destroyed in the conduct of construction work, until individual appraisals have been completed and photographs have been procured.

(3) *Inspection of Property.* (i) As soon as a landowner or tenant gives notification that he is vacating his property, or as soon as this information is obtained from any other source, the District Engineer will immediately have a member of his staff make a personal inspection of the property and execute ENG Form 1567, Report on Vacation of Property. The inspection will be made with a view of determining whether all buildings, improvements, and crops on the land to be acquired, as listed in the appraisal report, are still on the land and in substantially the same condition as they were on the date of the appraisal.

(ii) Where buildings, improvements, and crops have been removed under a reservation in the offer, an appropriate entry will be made in paragraph (3) of ENG Form 1567.

(iii) Where buildings, improvements, and crops have been removed or destroyed in the conduct of construction work on the project, an appropriate entry will be made in paragraph (3) of ENG Form 1567.

(iv) It will be determined whether or not the land is wholly unoccupied and vacant and whether there is evidence of present use thereof for farming and other operations.

(v) The original report will be retained in the real estate project files. The second copy will be held for the use of the closing attorneys on purchase cases, or for the use of the local representative of the Department of Justice in condemnation cases.

(i) *Public Relations.* One of the most difficult problems encountered in the real estate activities of the Department of the Army, particularly from a public relations standpoint, is that of the sudden dislocation of families, tenants as well as owners, and the relocation of these families. Special attention, therefore, will be given to their problems.

(j) *Payment of Relocation Assistance and Acquisition.* Public Law 91-646 provides for reimbursement of certain expenses incurred by owners and tenants who are displaced as the result of Federal and federally-assisted programs. Payment of relocation assistance benefits and certain costs incurred by the vendor in transfer of title to the Government and certain litigation expenses incurred by the owner is provided for under that Act.

§ 644.88 Other acquisition.

(a) *Acquisition From Other Federal Departments and Agencies*—(1) *Transfers.* Transfers will be obtained from other Government agencies after issuance of real estate directives. Muniments of title will be obtained from the transferring agency, if possible, and be forwarded to HQDA (DAEN-REP) WASH DC 20314, with the original transfer letter or document. Title 10 U.S.C. 2571 authorizes transfer of real property within the Department of Defense (10 U.S.C. 2662).

(2) *Permits.* Upon receipt of a proper request from an authorized command, service or agency, Division or District Engineers and the Chiefs of the Real Estate Divisions are authorized to

obtain, accept, and renew permits from other Government departments or agencies for the temporary (five years) use of land (except public domain for Air Force) and buildings. The use of over 500 acres of public domain land must have prior approval by the Assistant Secretary of Defense (MRA&L) pursuant to Department of Defense Directive 4165.12.

(b) *Withdrawal of Public Domain Lands and Right-of-Entry Permits for Temporary Use.* (1) Withdrawal of public domain lands will be necessary if a site is selected for construction and/or there is a continuing military use. Except in time of war, withdrawals in excess of 5,000 acres for military use must be by authority of an Act of Congress (Pub. L. 85-337, 43 U.S.C. 156).

(2) Requests for withdrawal of public domain land will be made to the appropriate State or Regional Supervisor of the Bureau of Land Management (BLM), Department of the Interior, by the Division or District Engineer, pursuant to 43 CFR Part 295, as soon as a real estate directive is issued.

(i) If use the of land is needed promptly to meet a construction deadline or for other use, the request for withdrawal will contain this information, and the BLM supervisor will be requested to expedite submission of his report to BLM in Washington, and to publish the proposed withdrawal in the FEDERAL REGISTER as soon as possible.

(ii) A copy of the request will be forwarded to HQDA (DAEN-REA) WASH DC 20314 (with a copy to HQ, USAF (PRER), WASH DC 20330, on Air Force projects), with request for assistance in obtaining issuance of the Public Land Order in time to meet construction or military use deadline.

(3) Pursuant to authority of 43 U.S.C. 416, requests for withdrawal of public domain lands may also be made to the appropriate State or Regional BLM Supervisor by the Division or District Engineer for the reservation of those public domain lands which will eventually be required for authorized Civil Works projects, in order to proceed with planning phase work and to prevent adverse private entry thereon. Such action will permit administrative jurisdiction to remain with the present Government agency for continued utilization not in conflict with the eventual purpose of the project. A copy of the request will be furnished to DAEN-REA.

(4) If a withdrawal is requested, the BLM supervisor cannot grant a permit to use the area; however, permits can be obtained for survey and exploration purposes, since these do not involve construction or military use of the land.

(5) Necessary rights-of-way will be obtained under the authority of section 507, Pub. L. 94-579, approved October 21, 1976.

(c) *Acquisition of Outstanding Rights on Public Domain*—(1) *Acquisition of Possessory Rights to Mining Claims.* (i) Upon issuance of a real estate directive to extinguish outstanding mining interests in the public domain, and notification that the Bureau of Reclamation (BLM) has withdrawn the public domain from appropriation under the public land laws and the public mining and leasing laws, the Division or District Engineer will, if necessary to obtain possession for construction or other project purposes, recommend to the Chief of Engineers the filing of a complaint in an eminent domain proceeding, based on a perimeter description of the project, and the obtaining of an order of immediate possession. Thereafter, the Division or District Engineer will promptly determine the possessory mining claims within the area withdrawn, and he is authorized to acquire such claims for either a nominal sum or an amount not to exceed the combined estimated costs of obtaining a detailed appraisal report and having the validity of the claim investigated by the BLM. This authority is limited to $1,000 per claim.

(ii) If an offer to settle is made on the basis provided in paragraph (c)(1)(i) of this section, and is not satisfactory to the possessory mineral owner, the Division or District Engineer will request the BLM to investigate the validity of the claim. In such case, under Comptroller General Decision B-143921, the District Engineer is authorized to make an agreement with the BLM for reimbursement of the following:

(A) Examination of the claim itself and assembling of the evidence to support the claim of invalidity.

(B) The presentation of the evidence, the cross-examination of witnesses for the mining claimant and other related expenses (Subpart A).

(iii) The Corps of Engineers is not authorized to reimburse the BLM for hearing of the evidence and the rendering of the decision as to the validity of the mining claim.

(iv) If determined to be valid, claims will be appraised and an offer will be made to the owner at the approved appraised value. BLM is authorized to determine value of the claims and the Division or District Engineer may wish to arrange with BLM to perform this service on a reimbursable basis. In the event the offer based on the approved appraisal is not acceptable to the owner, and a reasonable settlement cannot be effected by negotiation, the Division or District Engineer will forward a report to HQDA (DAEN-REA) WASH DC 20314 with recommendation as to whether the claim should be acquired by declaration of taking or be left outstanding. Those cases in which occupants were dispossessed under the order of immediate possession, referred to in paragraph (c)(1)(i) of this section, will be given priority attention in all phases of the procedure set out herein, including preparation and submission of declaration of taking assemblies in appropriate instances.

(2) *Acquisition of Grazing Rights.* (i) Grazing rights in the public domain are granted pursuant to the provisions of a series of Congressional acts commonly referred to as the Taylor Grazing Act, 43 U.S.C. 315 et seq. Section 315q of this Act provides as follows: "Whenever use for war or national defense purposes of the public domain or other property owned by or under the control of the United States prevents its use for grazing, persons holding grazing permits or licenses and persons whose grazing permits or licenses have been or will be cancelled because of such use shall be paid out of the funds appropriated or allocated for such project such amounts as the head of the department or agency so using the lands shall determine to be fair and reasonable for the losses suffered by such persons as a result of the use of such lands for war or national defense purposes. Such payments shall be deemed payment in full for such losses. Nothing contained in this section shall be construed to create any liability not now existing against the United States." It is emphasized that payments under this section are administrative; further that this section applies only to military projects.

(ii) Upon issuance of a real estate directive to acquire or terminate grazing rights in the public domain or other property owned or controlled by the United States and notification that the Government department controlling such lands has granted a right-of-entry or transferred the lands to the Departments of Army or Air Force, the Division or District Engineer will initiate action to acquire or terminate such grazing rights as authorized by the real estate directive.

(iii) Appraisals will be prepared in accordance with Subpart B and the guidelines set forth in Comptroller General Decision No. B-132774, dated October 9, 1957.

(iv) Discussions with landowners concerning acquisition of a ranch unit will be conducted in accordance with the procedures for fee acquisition.

(v) Offers will be prepared, accepted, and distributed as provided in § 644.87.

(vi) Title procurement and title clearance relating to the acquisition of title to any fee lands within the ranch unit will be the same as in any other fee acquisition. In preparing title evidence covering leasehold interests, a search of the records will be made by the Division or District Engineer Office and ENG Form 909, Attorney's Preliminary Certificate of Title, will be prepared. In connection with the search of the records, it should be noted that Federal grazing privileges may be pledged or encumbered with mortgages.

(d) *Acquisitions Under Provisions of Relocation Contracts.* (1) When land or interests therein, including subordination of minerals, required for project purposes are acquired under the provisions of relocation agreements negotiated in accord with Section 73, ER 1180-1-1, it will be necessary to procure title evidence covering such land and interests. If the value of interests so acquired is not otherwise determinable for compliance with § 664.84, said value will be determined by the Division or District Engineer by means of a memorandum appraisal to be retained in the tract file. While this type of acquisition does not involve the closing procedure set forth in § 644.70, so much of the title assembly described as is applicable, plus an executed or certified true copy of the relocation contract, will be used in the examination and approval of the title. The disposition of final title assemblies will be governed by § 644.71.

(2) The procedures described in §§ 644.81 through 644.88 do not apply to the extinguishment of outstanding rights, including subordination of easements and similar interests, under the provisions of relocation contracts, as differentiated from the acquisition of land or easements, or the subordination of oil, gas, and other mineral rights, to be utilized for project purposes.

(e) *Acquisition By Exchange*—(1) *Military.* The authority to acquire land by exchange for military projects is provided in 10 U.S.C. 2672, and in the Military Construction Authorization Act passed each year. As an example sections 601 and 702, Pub. L. 95-82, August 1, 1977, the Military Construction Authorization Act, 1978, provides in part, that "the authority to acquire real estate or land includes authority to make surveys and to acquire land, and interests in land (including temporary use), by gift, purchase, exchange of Government-owned land, or otherwise." Title 10 U.S.C. 2662a-4 provides that a transfer of real property owned by the United States to another Federal agency or another military department or to a state must be reported to the Committees on Armed Services if the estimated value of the property is more than $50,000. A prerequisite to any acquisition by exchange is authority for the acquisition.

(2) *Civil Works.* The authority to exchange land or other Government property for private lands or property in execution of an authorized river and harbor or flood control work or improvement is found in 33 U.S.C. 558b and 558b-1.

(3) *Coordination with the Office of Managment and Budget (OMB).* OMB requests that each proposal to use Government-owned property in a land acquisition exchange be cleared with the appropriate Associate Director of OMB. Disposal actions where exchange through the authority of the General Services Administration or specific legislation is envisioned will be cleared with OMB prior to filing a disposal report pursuant to 10 U.S.C. 2662. A draft letter to the Associate Director, Office of Management and Budget will be submitted to HQDA (DAEN-REA) WASH DC 20314 stating the requirement for the new acquisition, the description of the property to be excessed, its estimated fair market value, and a justification for the exchange of that property as constituting its highest and best use. OMB clearance will be required before disposal reports outlining exchange proposals are filed with the Congress.

INVOLUNTARY ACQUISITION BY THE UNITED STATES

§ 644.101 General.

This Section describes procedures of the Corps of Engineers relating to the involuntary acquisition of land and interests in land on the basis of a physical appropriation or use by the United States. It is applicable to all Division and District Engineers having real estate responsibilities.

§ 644.102 Examples of involuntary acquisitions.

While the Secretary of the Army and Secretary of the Air Force have no authority to acquire interests in real property except under express authorization and appropriation made by Congress, the Government may, nevertheless, in the performance of an authorized act involuntarily acquire an interest in real property, for which the owner is entitled to just compensation. Whenever a plaintiff successfully prosecutes litigation which establishes that an interest in real property has been taken, the interest so taken should be confirmed in the form of a grant, wherever possible. The instrument should be recorded in the public land records and permanently retained in the real estate files, as evidence of the interest taken and as a protection against possible future claims of purchasers for value without notice. No employee or representative of the Corps of Engineers shall intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his property, as prescribed by Pub. L. 91-646. Examples of involuntary acquisition are:

(a) Damage to real property caused by flooding, saturation, seepage, erosion, or other causes arising out of the construction, operation, or maintenance of an authorized project.

(b) Damage as a result of overflights of aircraft.

(c) Other instances where Government actions result in a restriction of the use of property.

§ 644.103 Litigation Reports.

In those cases where a landowner files suit alleging that the Government took his property or an interest therein, a litigation report should be furnished in accordance with ER 1180-1-1. Litigation reports will be submitted in quadruplicate in cases involving military installations, and in triplicate in cases involving civil works. District and Division Engineers will furnish an additional copy direct to the local United States Attorney in actions in a United States District Court. In addition to the information required by ER 1180-1-1, there will be furnished preliminary certificates of title to properties subject to the taking, covering a period of search of at least 25 years prior to initiation of the action, and indicating the date of acquisition of the plaintiff's interest. Certificates may be procured commercially, or may be prepared by a staff attorney.

(a) *Avigation Easements.* Reports on actions alleging the taking of an avigation easement should include the following information together with supporting exhibits:

(1) Permanency of the installation and its designated use;

(2) Dates of commencement of use of the runway involved and of each extension thereof;

(3) Date of commencement of takeoffs and landings by regularly assigned aircraft of the type (identify) causing the taking;

(4) Frequency and actual height of flight of the particular aircraft over some portion of plaintiff's property;

(5) Any applicable zoning regulations affecting use of the property;

(6) A drawing at an approximate scale of 1" to 400' showing the location and length of the present runway, its original length, and each extension, and also showing the location of plaintiff's property with relation to the approach-departure zone of the runway and the longitudinal distance in feet, measured along the extended center line from the end of the runway and the lateral distance measured perpendicular to the extended center line, of the plaintiff's property and of any dwellings thereon.

(7) A vertical projection of the drawing at an approximate scale 1" to 100' showing the approach-departure clearance surface at the specified slope ratio and the mean sea level heights of the end of the runway and of the plaintiff's property and any dwellings thereon; and

(8) Name of the person qualified to testify concerning preparation of the drawing.

(b) *Clearance Easements.* Litigation reports on actions alleging the taking of a clearance easement will contain the following:

(1) Details of any prior acquisition of clearance easements over the same property;

(2) Statement as to any outstanding clearance easement directives, including criteria for approach and transition zones, status of negotiations, and copies of appraisal reports;

(3) Statement that all acquisition of clearance easements has been stopped, unless their prompt acquisition is necessary to provide for current flight operation; and

(4) Recommendation that there be included in the estate, in the event of settlement, provisions for the clearance of existing obstructions and prohibition against future obstructions, provided that circumstances will permit a delay in the acquistion of a

clearance easement until completion of the litigation.

(c) *Appraisal Reports.* Appraisal reports will be submitted to HQDA (DAEN-REE) WASH DC 20314 after the Department of Justice has determined the date (or dates) of taking. These reports will reflect the "before" and "after" values of the property, based on the assumption that the United States acquired an easement on that date (or dates).

§ 644.104 Procurement of deed and title assembly.

In any case in which the Court determines that the United States has taken an interest in real property, the Department of Justice will attempt to have included in the findings and in the judgment a precise description of the interests taken. An attempt will also be made to provide in the judgment that payment by the United States will not be required until the plaintiff has delivered a deed or other acceptable conveyance of the interest taken.

(a) *Preparation of Instrument.* Upon receipt from the Department of Justice of information as to the nature of the settlement which has been reached, a deed will be prepared, drafted in accordance with § 644.70, covering the estate provided in the judgment.

(b) *Execution and Recording of Deed.* The Division or District Engineer will obtain proper execution of the deed, record the same, procure a final certificate of title of a commercial title company or a staff attorney, and obtain a final title opinion pursuant to the provisions of the Delegation to the Department of the Army for the Approval of the Title to Lands Being Acquired for Federal Public Purposes, dated December 4, 1970, and issued by the Assistant Attorney General, Land and Natural Resources Division, Department of Justice. The title assembly and final title opinion should be forwarded to HQDA (DAEN-REA-P) WASH DC 20314, with information copy of transmittal letter to Division Engineer.

(c) *Notification to the Department of Justice.* If the recorded deed and the final certificate of title are not readily available, the Division or District Engineer will notify the Land and Natural Resources Division of the Department of Justice by letter, with a copy to the appropriate United States Attorney, that the deed has been properly executed and delivered by the plaintiff and has been entered for record in order that settlement will not be delayed.

(d) *Disposition of Final Title Assembly, Mapping, and Audit.* When a final title opinion has been obtained, the Division or District Engineer will assign a tract number to the areas in which the interest has been acquired, will add the tract to the project map, and will transmit the final title opinion and related papers to HQDA (DAEN-REA-P) WASH DC 20314. The tract will be included in the audit of the installation to which it pertains. Audits will be revised for this purpose, if necessary. The amount of the judgment received by the plaintiff will be shown in the audit assembly, with a proper notation that it represents the amount of the judgment entered in the litigation, which will be identified in the audit by its civil number, and by designation of the Court in which it was rendered. A copy or abstract of the judgment will be inserted in the District Office audit assembly, identified as follows: "Directive by judicial decree for the acquisition of Tract No.; being an easement (or other interest), containing —— acres."

(e) *Action in Lieu of Confirmatory Deed.* Where a confirmatory deed cannot be obtained, the Division or District Engineer will obtain from the Clerk of the Court a copy of the final judgment (or an appropriately excerpted copy of the final judgment), acknowledged or properly certified to permit recordation in the local land records. The Division or District Engineer will record same and later transmit the appropriate title assembly to HQDA (DAEN-REA-P) WASH DC 20314. If the final judgment does not contain language which clearly vests title in the United States of the interest in land for which compensation was paid, request should be made of the United States Attorney to move the Court to amend the judgment to show that such title has vested.

ACQUISITION BY CONDEMNATION PROCEEDINGS

SOURCE: Sections 644.111 through 644.121 appear at 44 FR 8184, Feb. 8, 1979, unless otherwise noted.

§ 644.111 General.

Sections 644.111 through 644.121 describe the procedures of the Corps of Engineers relating to the acquisition of real estate and interests therein by condemnation proceedings. It is applicable to the Office of the Chief of Engineers (OCE) and to all Division and District Engineers having real estate responsibilities.

§ 644.112 Applicable statutes in condemnation proceedings.

A complaint in condemnation, and any declaration of taking filed in conjunction therewith, will contain a citation of the congressional authorization and appropriation acts for the particular project, and any other applicable acts of Congress. Existing acts of Congress authorizing the acquisition of land and interests therein are outlined in AR 405-10 and Subpart A. Acts of Congress applicable, generally, to condemnation proceedings are outlined below.

(a) *Military projects.* (1) Act of Congress approved August 1, 1888 (25 Stat. 357, 40 U.S.C. 257) authorizes the head of any Government department or agency to acquire real estate, otherwise authorized for acquisition, by condemnation proceedings.

(2) Section 2663 of Title 10, United States Code, authorizes the Secretary of a military department to acquire by condemnation any interest in land, including temporary use of the site, construction, or operation of fortifications, coast defenses, or military training camps.

(3) Section 9773 of Title 10, United States Code, authorizes the Secretary of the Air Force to acquire by condemnation additional permanent air bases and depots, enlarge existing air bases and depots, bombing and machine gun ranges, and areas for the training of tactical units.

(4) Section 2233 of Title 10, United States Code, authorizes the Secretary of Defense (with authority to delegate) to acquire by purchase, lease, or transfer, facilities necessary for the Reserve Components. The authority to acquire by purchase has been held to include the authority to condemn. Therefore, this section authorizes condemnation for both Army and Air Force Reserve Training Sites.

(b) *Civil works projects*—(1) *Rivers and harbors.* (i) Act of Congress approved April 24, 1888 (25 Stat. 94, 33 U.S.C. 591) authorizes the Secretary of the Army to cause proceedings to be instituted for the acquisition by condemnation of any land, right of way, or material needed to maintain, operate, or prosecute works for the improvement of rivers and harbors for which provision has been made by law.

(ii) Section 5 of the Act of Congress approved July 18, 1918 (40 Stat. 911, 33 U.S.C. 594) provides that possession of lands being acquired by condemnation proceedings for river and harbor works may be taken, provided adequate provision shall have been made for payment of just compensation.

(2) *Flood control.* (i) Act of Congress approved March 1, 1917 (39 Stat. 950, 33 U.S.C. 701) makes the provisions of the Act of Congress approved April 24, 1888 (paragraph (b)(1)(i) of this section) applicable to flood control works.

(ii) Section 6 of the Act of Congress approved August 18, 1941 (55 Stat. 650, 33 U.S.C. 701c-2) makes the provisions of section 5 of the Act of Congress approved July 18, 1918 (paragraph (b)(1)(ii) of this section) applicable to flood control works.

(3) *Local cooperation.* Acts of Congress approved June 29, 1906 (34 Stat. 632, 33 U.S.C. 592) and August 8, 1917 (40 Stat. 267, 33 U.S.C. 593) provide that the Secretary of the Army may institute condemnation proceedings for the acquisition of land or easement therein for river and harbor works which local interests undertake to furnish free of cost to the United States. The provisions of these Acts were made applicable to flood control works by the Acts of Congress approved March 1, 1917, and August 18, 1941 (paragraphs (b)(2)(i) and (ii) of this section).

(c) *Other pertinent statutes.* (1) Act of Congress approved July 18, 1918 (40 Stat. 911, 33 U.S.C. 594) provides that the United States shall have the right to take immediate possession of land to the extent of the interest condemned. The exercise of this right is subject, however, to the policy considerations set forth in the Act of Congress appoved January 2, 1971, Pub. L. 91-646 (84 Stat. 1894).

(2) Act of Congress approved February 26, 1931 (46 Stat. 1421, 40 U.S.C. 258a) makes provision for the filing of a declaration of taking in conjunction with condemnation proceedings and provides that title to the land or interests in land included in the declaration of taking vests in the United States upon filing with the court and deposit of the estimated compensation in the registry of the court.

(3) Title III of the Act of Congress approved January 2, 1971 (Pub. L. 91-646, 84 Stat. 1894) contains policies and guidelines for acquisition of land.

§ 644.113 Filing of complaint without declaration of taking.

(a) Only in exceptional cases will the Chief of Engineers give favorable consideration to the filing of a complaint in condemnation, and the request for an order of possession, without the concurrent filing of a declaration of taking and deposit of estimated compensation in the registry of the court. Examples of situations in which complaints may be used are as follows:

(1) Immediate possession is required for some essential military need and time does not permit preparation of an appraisal, title work, or negotiations.

(2) Condemnation proceedings are necessary in connection with a cemetery, in order to secure court approval of the relocation and reinterment plan in accordance with the procedure outlined in ER 1180-1-1.

(3) Where right of entry for survey and exploration, appraisal purposes, or other similar need is required, and there is no material interference with the owner's possession. However, where there is material interference with the owner's possession, or it is considered there will be significant damage to the land, a deposit of estimated compensation may be necessary.

(b) *Approval required.* Prior to submission of a complaint assembly, except in cemetery cases, all pertinent facts justifying the need for such action will be submitted to the Division Engineer for approval. If the proposed action is approved, the Division or District Engineer will inform all affected landowners and tenants of the action being taken, the necessity therefor, and the subsequent procedure to be followed by the Government in conducting negotiations to acquire the land after the filing of the complaint.

(c) *Complaint assembly.* The following assembly will be submitted to HQDA (DAEN-REA-C) WASH DC 20314 where only a complaint is to be filed:

(1) Five copies of individual tract descriptions identified as *Exhibit "A"*. (Reproduced copies will be accepted if clear and legible.)

(2) Five copies of segment or project maps, showing each tract or area to be acquired shaded or outlined in red and identified as *Exhibit "B"*.

(3) Five copies of a list of the names and addresses of the persons purporting to own the tracts or having an interest therein, identified as *Exhibit "C"*.

(4) Five copies of the exact estate or interest to be acquired, identified as *Exhibit "D"*.

(5) In Air Force projects and acquisitions for other agencies, one additional copy of each exhibit will be required.

(6) In Air Force project acquisitions, the additional information set out in § 644.114(f) will be submitted, in duplicate.

(7) In those jurisdictions that adopt the alternate form declaration of taking, complaint assemblies should be similiar to the schedules submitted for the declaration of taking assembly.

(d) *Letter of transmittal.* Where a complaint assembly is submitted, the letter of transmittal should include the following information:

(1) A statement indicating the date of approval of the Real Estate Design Memorandum in civil works projects or the date of the Real Estate Directive for other projects, and whether the land included in the complaint assembly is within the approved project boundary line, together with the cita-

tions of the authorization and appropriation acts which cover the acquisition.

(2) The approved appraised valuation and date of appraisal of the interest to be acquired or, if appraisals have not been prepared, the estimated value with a statement indicating the basis of the estimate.

(3) Information as to whether the land included in the complaint assembly is vacant or occupied, together with the date any occupants will be required to vacate the premises.

(4) If possession is required, an explanation of the need therefor and the reasons why the normal land acquisition schedule was not met.

(5) Results of contacts with the landowners and tenants and their views with respect to the filing of condemnation proceedings.

(6) A statement as to the plan and schedule to acquire such land after filing of the complaint in order to make funds available to the landowners and tenants.

(7) In assemblies concerning land for other than civil works projects, a statement indicating whether all of the land authorized in the Real Estate Directive is included in the assembly. Any variance between the area or estate authorized in the directive and those in the assembly should be fully explained.

(8) In military assemblies, a statement of expected local resistance to the proposed acquisition and efforts made to adjust military requirements to the local situation.

(9) Whether there have been any Congressional inquiries regarding the acquisition.

(e) *Action after filing complaint.* After filing of a complaint proceeding, action to acquire the land involved, either by direct purchase or by the filing of a declaration of taking, will be completed as soon as possible.

(1) Where a satisfactory Offer to Sell is obtained and accepted, the transaction will proceed through the stages of title clearance, payment and closing. Upon final approval of title, the Division or District Engineer will recommend to the Chief of Engineers that the Department of Justice be requested to dismiss the tract from the proceeding.

(2) Where a satisfactory lease of the premises included in a leasehold condemnation proceeding is obtained and accepted, the Division or District Engineer will recommend to the Chief of Engineers that the Department of Justice be requested to dismiss the tract from the proceeding.

(3) The recommendation of the Division or District Engineer for dismissal of a tract from condemnation will include the following information:

(i) Name of project.

(ii) Caption of the complaint and civil action number assigned thereto.

(iii) The date the final title approval was rendered; on lease cases, the date the lease was accepted.

(iv) A statement as to whether the particular deed or lease includes the same land described in the complaint under the same tract number.

(v) A statement as to whether the particular deed or lease includes all outstanding interests involved in the complaint insofar as the specific parcel of land is concerned. If all outstanding interests are not covered by the deed or lease instrument, a statement of the proposed method of acquiring those interests which remain outstanding, either by filing a declaration of taking or by direct purchase, or a recommendation that they be left outstanding permanently.

§ 644.114 Acquisition by declaration of taking.

If it has been determined that acquisition of a tract cannot be accomplished by purchase due to failure to reach an agreement with the owners as to value, inability to contact the owners, title defects, or for other reasons, acquisition will be completed by the filing of a declaration of taking in a condemnation proceeding and the concurrent deposit of the estimated compensation in the registry of the court. The requirements for a declaration of taking are set forth in 40 U.S.C. 258a.

(a) *Declaration of taking assembly.* The assembly to be submitted by the Division or District Engineer to the Chief of Engineers, with a recommendation for the filing of a declaration of taking, will contain the following:

(1) Seven copies of the declaration of taking. (Reproduced copies will be accepted if clear and legible). The copy to be executed and filed in court must be free of errors and erasures.

(2) Seven copies of tract descriptions and names and addresses of purported owners, identified as Schedule "A" to the declaration of taking.

(3) Seven copies of a segment or project map, showing the individual tracts outlined in red, or shaded in such a way as to identify them, constituting Schedule "B" to the declaration of taking.

(4) In acquisitions for Air Force and other agencies, one additional copy of each of the above is required.

(5) As to tracts which are appraised at $50,000 or more, it is necessary to have a least two appraisals for each such tract in condemnation. One copy of each appraisal will be forwarded with the assembly for those tracts valued less than $100,000, and two copies where the value is $100,000 or more. Also, a copy of the appraisal should be forwarded when there is a counteroffer of $50,000 or more, no matter what the appraisal is. In all cases where two appraisals are necessary, at least one will be by a contract appraiser approved in advance by the United States Attorney in whose jurisdiction the case will be filed.

(6) Appraisals must be on a current basis so that at the time of submission of the assembly, the review certificates should indicate that the review has been made within thirty days prior to submission of the assembly.

(7) Guides in preparing declarations of taking for acquisitions for the Departments of the Army (Military and Civil) and Air Force are contained in Figure 5-5 in EP 405-1-2.

(8) Each case where there is an accepted Offer to Sell on which we will ask the Department of Justice to obtain judgment should be submitted as a separate Declaration of Taking.

(b) *Negotiator's report.* Each declaration of taking assembly should be accompanied by a separate Negotiator's Report, ENG Form 3423 (Parts I and II), in duplicate, for each tract of land included in the assembly. The Negotiator's Report should be current, i.e., it should indicate a contact with the landowner, or his representative, at a time reasonably close to the date of submittal of the assembly, and should reflect that actual, practical and realistic negotiations were conducted in accordance with the procedure set forth in § 644.83. The Negotiator's Report should be complete, but should be concise and not made unduly lengthy by extraneous material. It should contain so much of the following information as may be pertinent:

(1) A brief physical description of the property, including its present use and highest and best use claimed by both the Government and the landowner.

(2) Number of discussions and date and place of each discussion, and a statement that the landowner was furnished a summary of the basis for the Government's valuation prior to negotiations.

(3) Statement of each offer made by the negotiator, any counteroffer received from the landowner, and any figures suggested by the negotiator in an effort to obtain a reasonable counteroffer above the Government's estimate of value.

(4) Where the discussions reveal that further negotiations would not be productive, a statement that the real estate representative explained that it was necessary that the interests be obtained through condemnation, not in the sense of a threat, but as an effort on behalf of the Government to secure an impartial determination by the court of the differences of opinion as to value, and in order to make funds available to the landowner.

(5) If the owner cannot be contacted for the purpose of conducting negotiations, a full explanation of the circumstances and the efforts made to contact the owner should be set forth in the Negotiator's Report.

(6) A statement that any remaining property of the owner enjoys access and is an economic unit, or if it is an uneconomic remainder, that the Government has offered to acquire the remainder.

(7) Where there is an Offer to Sell, the Negotiator's Report should include a statement that no separate

representations were made in order to obtain the offer, if this was the case. If any such representations were made, they should be fully explained. The report should also include the negotiator's telephone number.

(c) *Letter of transmittal.* The letter of transmittal to be submitted with a declaration of taking assembly will contain the following:

(1) The date of the real estate directive or the date of approval of the real estate design memorandum which includes the land to be condemned, a statement that the land is within the approved project boundary line, and the date of approval of the boundary line.

(2) A statement concerning the availability of funds.

(3) A list of the dates of the appraisals of the tracts in the assembly and the dates of the last review thereof. If more than one approved appraisal exists for any tract, the deposit will be in the amount of the highest approved appraisal. If the value of growing crops has been included in the appraisal, a statement concerning same is required in the transmittal letter pursuant to paragraph (h)(3) of this section.

(4) A statement that all owners of land included in the assembly, whose addresses are known, have been notified in writing that condemnation will be recommended and the reason therefor. The information furnished to the owners should include the name and address of the United States Attorney who will advise and assist them in applying for withdrawal of the funds deposited in the registry of the court. The notice to the owners should also state the date on which possession of their property will be required.

(5) A statement concerning the date when possession of each tract included in the assembly should be obtained. This should include information as to when the 90-day notice was given, as required by section 301(5) of Pub. L. 91-646 (84 Stat. 1894), or if not required, an explanation as to why not.

(6) In assemblies involving other than civil works projects, a statement as to whether or not all of the land authorized in the real estate directive is included in the proposed declaration of taking. Any variance that may exist between the acreage in the directive and the acreage in the declaration of taking should be fully explained.

(7) For military projects, a statement of the expected local resistance to the proposed acquisition by condemnation, and the efforts which have been made to adjust requirements to the local situation.

(8) For those assemblies involving the first case in a particular project, information as to:

(i) When the initial land acquisition for the project took place.

(ii) The total acreage for the project and the estimate of the cost thereof; if available, two copies of the project brochure furnished to landowners should be forwarded.

(iii) Whether or not an environmental impact statement has been filed, and, if not, when it is expected to be filed.

(9) Two copies of each accepted Offer to Sell covering any of the tracts included in the declaration of taking will be submitted with the assembly.

(10) A statement as to whether there have been any Congressional inquiries regarding the acquisition.

(d) *Title defects.* If a tract is recommended for condemnation due to title defects, three copies of the title opinion will be submitted with the assembly.

(e) *Deposit of funds.* Two copies of the declaration of taking, as finally approved and signed, will be transmitted by the Chief of Engineers to the Division and District Engineer. Procurement and delivery of a check to the United States Attorney for deposit in the registry of the court will be authorized, subject to the availability of funds.

(f) *Additional information to accompany Air Force acquisitions.* Each condemnation assembly (complaint or declaration of taking) covering the acquisition of land for an Air Force project will include the following information and material, in duplicate:

(1) A map showing the base boundaries, outlining in red all land included in the applicable real estate directive, and showing the land included in the condemnation assembly hachured in red. In the case of an off-base facility, the map will show the nearest bounda-

ry of the main base with relation to the off-base facility, outlining in red all land in the appplicable real estate directive, with the land covered by the condemnation assembly hachured in red.

(2) On the same map or a larger scale map, the following information on each tract in the applicable real estate directive:

(i) Tract number.

(ii) Acreage.

(iii) Ownership.

(iv) Contours.

(v) Existing improvements.

(vi) Proposed construction, including utilities, drainage ditches, and other supporting facilities.

(3) Summary of status of acquisition of all land included in the applicable real estate directive. ENG Form 3905-R will be used for this purpose. All discrepancies in figures for acreages and costs should be fully explained.

(4) If any of the land included in the applicable real estate directive is held under voluntary lease or leasehold condemnation, report for each such tract the annual rental, the period of time the leasehold interest has been held, and whether it is a voluntary lease or a condemnation leasehold. If the land is not under lease, this fact should be reported.

(5) If the United States has previously acquired an easement interest (clearance easement, safety area easement, etc.) in any of the land included in the condemnation assembly, identify the real estate directive which authorized the previous acquisition by number, date, interest acquired, acres, cost and method of acquisition (including lease number, tract number, caption with civil action number as applicable). A negative report is required.

(6) If severance damage is involved in any of the land included in the condemnation assembly, include a detailed statement of the facts and justification for the severance allowed, unless the severance damage has been adequately explained in a Real Estate Planning Report or a Real Estate Requirements Estimate, in which case such Report or Estimate should be identified for reference.

(7) A copy of the appraisal report on which the deposit in a declaration of taking is based, irrespective of value.

(g) *Interests included in declaration of taking.* (1) The estate recommended for use in a declaration of taking should conform to the estate approved by the Chief of Engineers in Civil Works projects and to the applicable directive in military and other agency projects. Any deviation should be fully explained and justified in the transmittal letter. Examples of estates which have been approved for use in declarations of taking are contained in Figure 5-6 in EP 405-1-2. A condemnation proceeding is an in rem action. The definition of "property" and what constitutes property is generally determined by reference to State law. Therefore, full consideration should be given to the applicable State law in connection with requests for deviations from the standard approved estates.

(2) Normally, under the "unit" rule a condemnation proceeding should include all interests in a given tract authorized for acquisition even though an Offer to Sell may have been obtained and accepted from the surface owner with an outstanding interest in the subsurface estate recited in the "Subject to" paragraph. In such a case, if it is necessary to condemn due to title difficulties or failure of the owner to carry out the terms of the Offer to Sell, the deposit will be increased by the appraised value of the outstanding subsurface interest. The only exception to including subsurface interests outstanding in third parties is in the case of block ownership of subsurface interests; i.e., where a person, corporation, or other entity owns subsurface interests under more than one surface tract and in sufficient amount for the entire interest holding to have added value, for operational or other reasons, because it is in a block ownership. In other words, block ownership exists when the acquisition of a part of the block would require the assessment of severance damage, even if the value of the interest or the amount of the severance damage would be in a nominal amount. On this basis, subsurface in-

terests need not be contiguous to constitute a block ownership.

(3) If future negotiations to acquire or subordinate the subsurface interests left outstanding under paragraph (g)(2) of this section (or any non-block subsurface interests "excepted" from direct purchase cases) are unsuccessful, and the outstanding interest cannot be waived under the provisions of § 644.86, then acquisition or subordination of the outstanding interest should be accomplished by condemnation proceedings. In so doing, block ownerships should be condemned as a unit rather than on a piecemeal basis. Full information should be submitted with such assemblies as to the method of acquisition of each surface ownership affected by the subsurface acquisition.

(h) *Payment for crops.* At the time the declaration of taking assembly is prepared, it will be necessary that a determination be made as to whether the value of growing crops should be added to the value of the land improvements in determining the amount to be deposited as estimated compensation. The determination will be made as follows:

(1) If the crops have been harvested, or it is known or highly probable that the crops will be harvested by the landowner or tenant, no deposit will be made for the crops.

(2) The approved appraised value of crops will be included in the amounts to be deposited in all other cases.

(3) The letter forwarding the declaration of taking to the Chief of Engineers will state whether the value of growing crops has been included in the amount recommended for deposit, and will set forth a statement of the facts upon which the action is based.

(i) *Filing and possession.* Upon the filing of a complaint, accompanied by a declaration of taking, the court has the power to fix the time within which and the terms upon which the parties in possession shall be required to surrender possession to the United States (40 U.S.C. 258a). Requests for orders of possession should be made only after all requirements of Pub. L. 91-646 (84 Stat. 1894) regarding possession have been satisfied.

(1) The Division or District Engineer will ascertain from the United States Attorney the date on which the condemnation proceeding with declaration of taking is filed and the date on which possession is available. The using service of the Army and Air Force or the local representative of other agencies will be informed of the date on which possession of the land is available.

(2) The above information, together with the civil number assigned to the case, and a copy of the complaint and order of possession will be furnished to HQDA (DAEN-REA-C) WASH DC 20314 within six weeks after the date the case was forwarded by the Chief of Engineers to the Department of Justice. If this cannot be accomplished, an explanation will be furnished by such date.

(3) Where an Order of Possession is obtained but the landowner refuses to comply, it may be necessary to obtain a Writ of Assistance from the court. Prior to requesting the United States Attorney to obtain such a Writ, all pertinent facts should be reported to DAEN-REA-C.

(4) The United States Attorney should be requested to have judgment entered in accordance with the terms of any accepted Offers to Sell immediately after the filing of the case, since delay in taking such action works to the disadvantage of the Government. Any difficulty in securing prompt action by the United States Attorney in this matter should be reported to DAEN-REA-C.

(j) *Amendments.* (1) If at any time it becomes necessary to amend a complaint or declaration of taking previously filed, an amendment assembly will be submitted to DAEN-REA-C together with a full statement of the facts requiring the amendment. The letter of transmittal should certify that the tracts affected by the amendment have not been adjudicated.

(2) No amendment should be submitted which will result in a revestment of an interest in property, unless a stipulation for revestment has been obtained from the former owner in accordance with § 644.115.

(3) If, after the filing of a declaration of taking, a substantially higher

appraisal is approved for any reason, and a settlement does not appear imminent, an amendment will be submitted promptly to increase the amount of the deposit.

(k) *Alternate form declaration of taking.* An alternate form of Declaration of Taking has been approved by the Judicial Conference on an optional basis, and must be used where the local District Court requires. Under this form a Declaration of Taking may have up to 15 ownerships, but each ownership will be set up separately so that it may be included in a separate civil action. In other words, there may be up to 15 separate civil actions which are keyed in to one Declaration of Taking. An example of this type of Declaration is included in Figure 5-5 in EP405-1-2. In this form, Schedule "A" will include the authority and public uses. Schedule "B" will include the description, the estimated compensation, and the estate to be acquired. Schedule "C" will be the plan showing the land to be acquired. It will be noted that there will be a separate Schedule "A", "B", and "C" for each ownership. The schedules may include more than one tract where the ownership is unified and is an economic unit. All of the civil actions will be keyed in to the Declaration of Taking by a Master File number. The Master File number must be used on all correspondence pertaining to tracts in this type of an assembly.

§ 644.115 Revestment of title by stipulation.

When fee title or an interest in property has been acquired by the United States by declaration of taking in a condemnation proceeding and it is determined to be in the best interest of the Government to wholly or partially exclude said property or interests therein, or to acquire a lesser estate, such exclusion or diminution in the estate can be accomplished by stipulation with the former owner under the provisions of the Act of Congress approved October 21, 1942 (40 U.S.C. 258f).

(a) *Required approval.* All stipulations involving a revestment of title must be forwarded to DAEN-REA-C for approval with a full statement of the facts, related data and recommendations. Approval of the revestment action must be obtained from the appropriate using agency. Such stipulations will not be filed in the condemnation proceedings by the United States Attorney until the specific approval of the Chief of Engineers is obtained and the matter coordinated by the Chief of Engineers with the Department of Justice. It should be stressed in negotiations that final approval of the stipulation is under the judrisdiction of the Attorney General, based on the recommendation of the Chief of Engineers.

(b) *Reduction of price.* A stipulation for revestment should provide for a deduction from the agreed price or from the ultimate award of an amount equal to the difference between the value of the property originally taken and the value of said property after the proposed exclusion of a part thereof or acquisition of a lesser interest therein, i.e., the stipulation should be an over-all settlement of the case whenever possible. If it is impossible to reach an amicable agreement for complete settlement for the Government's acquisition of the tract, an agreement as to the area and estate, leaving final determination as to compensation with the court, may be submitted with facts showing that the proposed action is in the best interest of the Government. The stipulation should also include a release concerning any benefits under section 304, Pub. L. 91-646 (84 Stat. 1894), because of the revestment, particularly when no agreement is reached concerning compensation.

(c) *Required information.* A sample stipulation for revestment is contained in Figure 5-8 in EP405-1-2 which may be adapted to fit the particular project and tract involved. In this connection, the following requirements should be observed:

(1) The stipulation will not provide for any change in the amount of the deposit unless the stipulation provides for an overall settlement of the case or the entire tract is to be excluded from the acquisition.

(2) The areas in which the Government has acquired an interest and those in which an interest will be re-

tained after the revestment will be fully described.

(3) The estates to be retained by the Government after the revestment will be accurately described; where the owner reserves mineral or other interests or use, appropriate restriction of exploration and subordination to the paramount right of the Government to use the property for the required purpose will be included.

(4) The stipulation should include, as part of the consideration:

(i) Consent by the former owner to the Government's acquisition of the revised area and the estates therein in the event the stipulation is approved.

(ii) Withdrawal of any answer contesting the Government's right to acquire the property and any interrogatories theretofore filed.

(iii) A waiver of any and all claims by the former owner, his heirs and assigns, against the United States, the State, County and political subdivisions thereof for loss of access to the land (where applicable).

(5) The stipulation will include, as an exhibit, maps delineating the fee area in red, the easement area in blue, and the area to be revested in yellow.

(6) The letter of transmittal in connection with any revestment in Civil Works projects should include information as to whether the area in which title is to be revested has a potential for recreational use without regard to the currently established public access areas.

(d) *Application.* The foregoing procedure applies only to instances where a declaration of taking has been filed. Where only a complaint has been filed, the necessary revisions may be made by securing a satisfactory Offer to Sell and deeds to the United States, or by amending the complaint and filing a declaration of taking containing the revised descriptions or estates.

§ 644.116 Distribution, reservations, and title evidence.

Distribution of the estimated compensation deposited in the registry of the court is the responsibility of the United States District Court. However, the Division or District Engineer will assist the United States Attorney in arranging for the distribution of funds deposited with a declaration of taking in order that landowners may receive either partial or total payment as soon as possible.

(a) *Distribution.* Partial or total distribution may be made upon a showing to the court that the claimant is the proper person to receive the money on deposit (40 U.S.C. 258a). An examination of the title evidence by the United States Attorney, together with a physical inspection of the premises, is usually sufficient to enable the United States Attorney to ascertain the proper claimants so that he may consent to the entry of an order of distribution. Distribution may be made without prejudice to the owner's right to contest for a higher award than the sum deposited by the United States.

(b) *Inspection and title evidence.* As soon as a condemnation proceeding is filed, a physical inspection of the premises will be made and the United States Attorney will be furnished the following:

(1) ENG Form 798, Certificate of Inspection and Possession, or such other similar form as may be requested.

(2) ENG Form 1567, Report on Vacation of Property.

(3) Title evidence and all available curative material covering the tracts of land included in the declaration of taking.

(4) Copies of all offers to Sell, leases, relocation agreements, etc., which are pertinent to the case and would be useful in making distribution.

(c) *Reservations.* If the landowners are to be permitted to remove crops, timber, buildings or other improvements from land acquired in the declaration of taking (by approval of the Division or District Engineer), a stipulation for reservation of these items may be obtained at this time. The stipulation should be in a form acceptable to the United States Attorney, should specify the date on or before which the reserved items are to be removed, and should provide that if the reserved items are not removed on or before said date, the right of removal shall terminate automatically and the United States shall have a good and indefeasible title to these items without further notice. The consideration to the Government for the reservation will be in an amount not less than the appraised value of the crops, or not less than the appraised salvage value of the timber, buildings or other improvements which are reserved, and the stipulation should provide that such amount shall be deducted from the amount of the final award.

(d) *Continuation of title evidence.* A continuation of the existing title evidence will be obtained to include a search of the records to a date subsequent to the date of filing of the Notice of Lis Pendens, the Judgment on Declaration of Taking, or the filing of the complaint in those states where such filing constitutes notice. The additional title evidence will be furnished to the United States Attorney as soon as possible after filing of the case.

§ 644.117 Procedure prior to trial.

(a) *General.* After filing of condemnation proceedings, the Division or District Engineer will maintain close liaison with the United States Attorneys and will render all possible assistance to the United States Attorneys in negotiating settlements, preparing cases for trial, and in conducting such trials. When the Division or District Engineer is informed that a case has been set for trial involving an unusual or novel issue of fact or law, or where the Government testimony will be $100,000 or more, he will promptly furnish this information to DAEN-REA-C. In addition, the Division or District Engineer should:

(1) In coordination with the United States Attorney, conduct discussions for settlement with landowners and other interested parties defendant. When a satisfactory agreement has been reached, an executed stipulation in a form satisfactory to the United States Attorney will be obtained. A suggested form of stipulation as to just compensation is contained in Figure 5-8 in EP 405-1-2. In this connection, the closest cooperation and collaboration must exist between representatives of the Department of the Army and the Department of Justice; no settlement negotiations should be conducted by Corps personnel without the knowledge and consent of the United States Attorney. If the property owner is unwilling to execute a stipulation until assured that the amount of the settlement will be accepted by the Government, formal execution of the stipulation may, in such instances, be delayed. However, the offer will be processed in accordance with the applicable provisions of paragraph (b) below.

(2) Furnish maps, photographs and other necessary exhibits for trial.

(3) Assist in preparing expert witnesses for trial.

(4) Take necessary action to assure the presence of witnesses at the trial. District personnel who qualify as expert witnesses will be made available.

(5) Be represented at the trial by an attorney thoroughly familiar with Federal court procedures, condemnation law, and the details of the project affected by the condemnation proceedings.

(b) *Stipulated settlements.* (1) Where the amount of the stipulation obtained in accordance with paragraph (a)(1) of this section does not exceed the high, approved appraisal prepared by an appraiser employed by, or under contract with, the Corps of Engineers, and the proposed settlement will completely dispose of the issue of compensation for all interests acquired in the tract in the proceeding, approval of the settlement will be recommended by the Division or District Engineer or the Chief of the Real Estate Division directly to the United States Attorney. The Division or District Engineer will inform DAEN-REA-C of the action taken, either by sending a copy of the letter addressed to the United States Attorney of by separate correspondence.

(2) Where the total settlement for all interests acquired in a given tract does not exceed $40,000 and the proposed settlement will completely dispose of the issue of compensation for all interests acquired in the tract in the proceeding, Division and District Engineers and the Chiefs of the Real Estate Divisions are also authorized to recommend approval of settlements directly to the United States Attorney. In leasehold condemnation cases the monetary limitation includes the full lease term and not merely the per

annum rental. DAEN-REA-C will be informed of the action taken in the same manner as in paragraph (b)(1) of this section. Even though the total settlement for all interests acquired in a given tract does not exceed $40,000, the proposed settlement will be submitted to DAEN-REA-C for consideration in the following instances:

(i) If the United States Attorney and the Division or District Engineer cannot agree as to whether a particular settlement should be consummated.

(ii) If the stipulation involves a novel issue of law or question of policy which would adversely affect the disposition of other tracts in a project.

(iii) If revestment of any land or interests therein or change in estate is involved.

(3) All proposed settlements not covered by paragraphs (b) (1) and (2) of this section will be forwarded to DAEN-REA-C, together with specific recommendations of the Division and District Engineers and a full statement of the facts. Three copies of the signed stipulation will be forwarded to DAEN-REA-C with the report in those situations where the stipulation contains any unusual conditions or terms. The report should contain the following:

(i) The amount of the deposit and the amount of the proposed settlement.

(ii) The amounts and dates of all Government appraisals. Where the Department of Justice appraisal is substantially above or below the Corps of Engineers' appraisals, the Division and District reviewing appraisers should carefully examine the appraisals and ascertain whether the facts in the case and the appraisal techniques have been consistently applied, and should prepare a comparative analysis.

(iii) The appraisal valuations by the property owners, their appraisers, or other witnesses who may testify for the owners, if such can be ascertained.

(iv) A statement of the recommendation of the United States Attorney as to the proposed settlement.

(v) Such other matters as should be considered by the Chief of Engineers in determining whether the proposed settlement is satisfactory; e.g., any pattern of awards which has been established as the result of other trials concerning land at the same project, or in the same Federal judicial district, disposition of any accepted Offer to Sell, any unusual legal or factual issues involved, any unusual factors which would increase the hazard of proceeding to trial, or the anticipated effect of the settlement on remaining acquisition in the project.

(vi) Whether or not funds are available to satisfy any deficiency.

(vii) The report should contain the required information in tabulated form. For each item the statement should be short and concise; lengthy reports are not required.

(4) A copy of the report and recommendation sent to the Chief of Engineers will be immediately transmitted to the United States Attorney. If the settlement is satisfactory, the Chief of Engineers will forward a letter of approval to the Department of Justice, recommending that the stipulation be approved, filed and judgment entered thereon. A copy of the letter of approval will be sent to the Division or District Engineer. Receipt of such copy is authority to satisfy the judgment when entered, provided funds are available.

(5) If a stipulation is obtained by a United States Attorney in excess of their authority, they will forward the proposed settlement to the Department of Justice. Simultaneously, in accordance with procedures agreed upon by the Chief of Engineers and the Department of Justice, the United States Attorney will transmit copies of the transmittal letter and of the proposed stipulation to the Division or District. The Division or District Engineer will immediately forward the letter outlined in paragraph (b)(3) of this section to the Chief of Engineers.

(6) All settlements negotiated for interests acquired in condemnation proceedings will be inclusive of interest and will include all claims of any nature arising as a result of the taking of the estate recited in the complaint or declaration of taking, with the exception of benefits to which the landowner may be entitled under Pub. L. 91-646 (84 Stat. 1894). In lease-hold condemnation cases, all proposed set-

tlements should include not only an agreement as to compensation for the period of the leasehold but also an agreement as to any and all claims arising from restoration of the premises, if known (§ 644.121(b)).

(7) Where surface and subsurface interests are acquired in a single condemnation proceeding, it is desirable to settle by stipulation, or to go to trial, on the "unit" basis. Many United States Attorneys insists on this course of action. However, Division or District Engineer should cooperate with United States Attorneys who wish to negotiate for stipulated settlements which may not include all of the interests acquired in a given proceeding as to a specific tract or tracts, provided appraisal reports have been prepared in such a manner as to make the appraised value of the several interests ascertainable.

(8) If an offer of settlement is not intended to include the full interest which was condemned in a particular tract, the letter transmitting the settlement offer will specifically identify the interests included in the settlement, the interests which remain unsettled, and the amount of estimated compensation remaining on deposit for the unsettled interests. The amounts remaining on deposit for the unsettled interests should be the appraised valuation of such interests.

(9) Landowners will be advised during negotiations for settlement that offers to settle are not binding on the United States until accepted by a duly authorized representative of the Department of Justice.

(10) In cases where tracts which are covered by accepted Offers to Sell are acquired by declaration of taking because of title defects or the failure of the landowner to carry out the terms of the Offer to Sell, the United States Attorney will be informed by letter and furnished copies of the Offer to Sell. The consideration contained in the Offer to Sell is considered binding upon the landowner despite the fact that condemnation is used to acquire title to the land. No settlement will be approved by the Division or District Engineer in an amount exceeding the amount contained in the Offer to Sell unless the Offer has been set aside by court order. Reports submitted in accordance with paragraph (b)(3) of this section will contain a statement as to the status of any Offer to Sell which may have been accepted.

(c) *Appraisal Review.* Land and Natural Resources Division Directive No. 11-68, dated 22 November 1968, provides that where two or more appraisals for a particular property have a valuation spread in excess of 10 percent of the high appraisal figure, the United States Attorney should submit such appraisals to the local representative of the Corps for approval. Every effort should be taken to see that this policy is followed so that the Corps has full knowledge of the appraisal reports on which settlement negotiations or trial preparation is based. In those instances where the United States Attorney and the Division or District Engineer cannot agree as to whether an appraisal or appraiser should be used at trial or in connection with settlement negotiations, copies of all appraisals, together with the analysis of the reviewing appraiser, should be submitted to HQDA (DAEN-REE) WASH DC 20314 for further consideration and possible discussion with the Department of Justice.

§ 644.118 Awards.

(a) *Approval by Division or District.* Division or District Engineers and the Chiefs of the Real Estate Divisions have been authorized to approve court awards (including jury or commission awards) where such awards do not exceed the highest testimony presented at the trial by a qualified appraiser employed by the Government. In such cases, the United States Attorney.will be notified that the award is approved and the Chief of Engineers will be notified of such action.

(b) *Approval by Chief of Engineers.* (1) If the award is in excess of the highest testimony presented at the trial by a qualified appraiser employed by the Government, or involves a matter of a doubtful or controversial nature, a report concerning the trial will be forwarded by the Division or District Engineer to DAEN-REA-C.

The report should contain, but not be limited to, the following information:

(i) The amount of the verdict or award.

(ii) The appraisal valuations given in testimony by all witnesses, including any pertinent comments on the effectiveness of the witnesses, as appropriate.

(iii) A statement of the recommendations of the United States Attorney as to the acceptance of the verdict or award, if available without causing a delay in submittal of the report.

(iv) Where the trial concerned less than all interests acquired in a given tract, the report should state the precise interests adjudicated at the trial, the other interests which remain unadjudicated, the proposed disposition of the unadjudicated interests and the amount of the deposit allocated to the unadjudicated interests.

(v) Whether or not funds are available to satisfy any deficiency plus interest.

(2) Long narrative reports of the events at the trial or hearing are not necessary except in unusual cases. A brief, but complete, statement of the pertinent facts will be adequate in most cases. A form for use in connection with submission of trial reports is included in Figure 5-9 in EP 405-1-2; however, it is not intended that this form constitute the entire report. Where the case was tried by a Commission, copies of the Commissioners' Report will be submitted with each copy of the trial report. Close liaison must be maintained with the United States Attorney's Office in order that these reports will be received promptly after they are filed in the case.

(3) The report outlined above should be accompanied by the recommendation of the Division or District Engineer as to what action should be taken with respect to the Commissioner's Report, court award or jury verdict. This recommendation should include a discussion of any matters which should be considered by the Chief of Engineers in determining whether the award is satisfactory, e.g., the history of past awards at this project or in the same judicial district, the basis used by the commission in arriving at its determination of value, whether enhancement from the project or a second taking was an issue, the disposition of any accepted Offer to Sell on any tract involved in the trial, etc. (The basis of findings of value to be included in the report of a commission appointed under Rule 71A(h) was considered by the Supreme Court in *United States* v. *Merz*, 376 U.S. 192). Where the recommendation is to reject the award, specific reasons with supporting legal analysis should be given. The fact, standing alone, that an award is considered excessive is not sufficient reason upon which to base an appeal.

(4) The report and recommendation should be received by the Chief of Engineers within five working days after the Commissioners' Report has been filed or the trial concluded. In order to accomplish reporting within the prescribed time limits, District Engineers will forward reports and recommendations direct to DAEN-REA-C, with a copy to the appropriate Division Engineer. The Division Engineer will submit comments and recommendations to DAEN-REA-C within three working days after receipt of the copy of the District Engineer's report. The District must insure that our right to object is extended if the situation warrants.

(c) *Payment of awards and settlements.* (1) If an award or stipulated settlement requires the deposit of a deficiency, judgment will be entered by the court and thereafter transmitted to the Division or District Engineer by the Department of Justice for procurement of a check for deposit in the registry of the court in satisfaction of the final judgment.

(2) The copy of the letter from the Chief of Engineers to the Department of Justice recommending approval of an award or settlement, if required under §§ 644.117(b)(3) and 644.118(b), will constitute authority for payment of the deficiency, provided funds are available. If approval is not recommended by the Chief of Engineers to the Department of Justice and the judgment is submitted to the Division or District Engineer for payment, it should be forwarded to DAEN-REA-C without action. Upon receipt of a judgment where payment is authorized

and funds are available, the Division or District Engineer will immediately procure and deliver the check to the United States Attorney and inform DAEN-REA-C of the action taken.

§ 644.119 Procedure after final judgment.

Generally, it is not necessary to obtain a final certificate of title or title insurance policy in condemnation cases where the intermediate or continuation certificate of title is continued to a date subsequent to the date of filing of the Notice of Lis Pendens, and the liability of the title company is not limited to an amount less than 50 percent of the total consideration paid for the land by the United States.

(a) *Final title opinion.* After entry of final judgment, the title assembly will be examined and a final title opinion issued. The title opinion and related papers on Army and Air Force projects will be forwarded to HQDA (DAEN-REP) WASH DC 20314 for permanent filing.

(b) *Report required to close case.* When all interests in a proceeding have been disposed of by final judgment, the Division or District Engineer will so advise the Chief of Engineers in order that the case may be closed. This report should not be made until the time for appeal has expired or any pending appeals have been resolved. The report should include a copy of the final judgment or other order of the court disposing of the case, and a statement that all monies deposited in the registry of the court have been disbursed.

§ 644.120 Condemnation for local cooperation projects.

Under the provisions of the River and Harbor Acts approved June 29, 1906 (33 U.S.C. 592) and August 8, 1917 (33 U.S.C. 593), and the Flood Control Acts approved March 1, 1917 (39 Stat. 950) and August 18, 1941 (33 U.S.C. 701c-2), respectively, the Secretary of the Army may cause proceedings to be instituted in the name of the United States for acquisition by condemnation of lands, easements or rights-of-way which local interests undertake to furnish free of cost to the United States. Requests for the institution of proceedings in the name of the United States will be addressed by the local parties to the Secretary of the Army and submitted to the Division or District Engineer. No land will be acquired on behalf of local interests by the filing of condemnation proceedings until local interests have furnished the Division or District Engineer with satisfactory assurances in accordance with the authorization act, and sufficient funds have been deposited with the Division or District Engineer to pay the expenses of the proceedings and any awards that may be made in the proceedings.

(a) *General.* The Corps of Engineers will institute condemnation proceedings on behalf of a local interest only when the local interest:

(1) Lacks authority to acquire the necessary real estate interests by eminent domain; or

(2) Cannot obtain possession by local eminent domain proceedings in time to meet the construction schedule; or

(3) Unusual circumstances exist so that acquisition by local inerests would not be in the best interest of the United States.

(b) *Information to accompany assembly.* Upon request of the local interests that the real estate interest be acquired by condemnation proceeding in the name of the United States, the Division or District Engineer will transmit to HQDA (DAEN-REA-C) WASH DC 20314 an appropriate condemnation assembly, prepared in accordance with § 644.114, with recommendations and the following information:

(1) Citation of authorizing act.

(2) Whether valid assurances have been accepted, giving date of acceptance.

(3) That the estate or estates to be acquired conform to the requirements set forth in Subpart J (to be published).

(4) Appraisal values of the interest proposed for acquisition.

(5) That sufficient funds to cover court awards and expenses of the proceedings have been deposited by local interests with the Division or District Engineer.

(6) Efforts made by local interests to acquire the real estate interests and reasons for requesting the United

States to file condemnation proceedings.

§ 644.121 Leasehold condemnation requirements.

(a) *Requirements for extension.* The interest acquired in land by a leasehold condemnation proceeding terminates after a one-year term, unless notice to extend the term is filed in the appropriate United States District Court. In all leasehold cases, the Division or District Engineer will ascertain from the using service whether the premises included in such condemnation proceedings will be required for an additional term. This should be done sufficiently in advance of the end of the term to allow adequate time for the action necessary to extend the term. These instructions apply to civil works projects as well as military projects.

(1) The Department of the Air Force will ascertain and advise the Chief of Engineers concerning the future requirements for the land in Air Force leasehold cases. Where the Department of the Air Force has a continuing requirement for land included in condemnation leasehold cases which are not extendible, the appropriate Division and District Engineers will be informed at the earliest practicable date.

(2) Extension of the term in a leasehold condemnation case must be accomplished through the Department of Justice which, upon request of the Chief of Engineers, will issue instructions to its field representatives to prepare a notice of election to extend the term and file it in the appropriate United States District Court. The Chief of Engineers should be advised of requirements of using services for extension of leasehold condemnation cases five months prior to the time that filing notice of extension with the court is due. The majority of pending leasehold condemnation cases require that notice to extend the term be filed with the court 30 days prior to the end of the term, although a few cases require the notice of extension to be filed at least 60 days prior to the end of the term. Negative reports are required.

(3) Since the General Services Administration is the disposal agency for excess and surplus airport property, all condemnation leaseholds forming an integral part of an airport should be extended and kept in force with the concurrence of the Department of the Air Force unless and until contrary instructions are received from the General Services Administration. In the event a bombing range or other installation in which leasehold interests have been acquired by condemnation is excess or surplus, but will not be decontaminated or dedudded prior to the end of the term, the leasehold condemnation proceeding will be extended beyond that date. In reporting leasehold condemnation cases to be extended within the categories mentioned in this paragraph, full information as to the necessity for extensions in each case should be furnished DAEN-REA-C.

(4) Specific authorization for deposit of funds in condemnation leasehold cases will be issued to Division and District Engineers by the Chief of Engineers.

(b) *Termination of leasehold condemnation proceedings.* If the need for all or part of the land included in a leasehold condemnation proceeding should terminate prior to the expiration of the term condemned, in the case of fixed term estates, or prior to the expiration of the right to renew by filing notice of extension, the Division or District Engineer, upon notification by the using service that the land is no longer needed, shall advise DAEN-REA-C accordingly. Prompt action will be taken by the Division or District Engineer to comply with the applicable requirements of Subpart I (to be published) relative to screening real property excess to one component of the Department of Defense with all other components and Federal agencies outside of the Department of Defense. Where restoration is involved, a report will be furnished DAEN-REA-C setting forth the status thereof.

(c) *Report to close leasehold condemnation cases.* When the term condemned has expired or all interests have been terminated and all interests have been disposed of by final judgment, the Division or District Engineer will so advise DAEN-REA-C in order that the case may be closed. Report in accordance with § 644.119(b) shall be furnished and shall also include a statement that the issue of restoration has been settled.

ACQUISITION BY LEASING

SOURCE: Sections 644.131 through 644.142 appear at 44 FR 31116, May 30, 1979, unless otherwise noted.

§ 644.131 General.

Sections 644.131 through 644.142 outline the procedures of the Corps of Engineers for the leasing of real estate and interests therein for military and civil works purposes. They are applicable to all division and District Engineers having real estate responsibilities. To the extent practicable, these procedures will be followed by overseas commanders, in conjuction with the provisions of AR 405-10, Chapter 3. In general, these procedures also apply to the leasing of land and improvements for other Government agencies which authorize the Corps to acquire leasehold interests.

§ 644.132 Authority.

(a) Authority to lease real property interests for the Department of the Army in the United States, the Commonwealth of Puerto Rico, and the Virgin Islands is derived from annual appropriation acts.

(b) Title 10 U.S.C. 2675 authorizes the acquisition by lease, in any foreign country, of structures and real property relating thereto that are needed for military purposes. Leases under section 2675 may not be for a period of more than five years, except that a lease under this section for military family housing facilities and real property relating thereto may be for a period of more than five years but may not be for a period of more than ten years.

§ 644.133 Responsibilities.

(a) The Corps is responsible for acquiring space in buildings, or land, or both land and buildings, under its own authority or through the General Services Administration (GSA) in designated urban centers, for the Departments of the Army and Air Force; Department of the Navy, including the Marine Corps, for recruiting and main stations; Department of Energy and the Nuclear Regulatory Commission, excluding space in GSA urban centers; National Aeronautics and Space Administration, as requested; and other agencies, such as the Department of Defense, upon request. In carrying out these responsibilities, Division and District Engineers will:

(1) Furnish staff supervision to using services on all leasing matters, as well as technical assistance and guidance.

(2) Develop plans and studies, usually in the form of Lease Planning Reports, for commanders of using services when appropriate.

(3) Make recommendations to the using services and/or the Chief of Engineers on important lease and lease planning matters.

(4) Report controversial or unusual leasing matters to HQDA (DAEN-REA-L) WASH DC 20314 by the submission of a summary of the facts, copies or proposed lease documents, and other data, together with recommendations thereon.

(b) In accordance with Reoganization Plan No. 18 of 1950 (40 U.S.C. 304c) and under the provisions of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471), the Public Buildings Service of GSA assumed all functions with respect to the acquisition by lease of general-purpose space; the assignment and reassignment of such leased space and of Government-owned space; and the operation, maintenance, and custody thereof in selected urban centers. The Administrator, GSA, is authorized to assign and reassign office space in the United States upon his determination that such assignments or reassignments are advantageous to the Government in terms of economy, efficiency, or national security after consulting with the heads of the executive agencies concerned.

(c) Reorganization Plan No. 18 also provided that the Administrator may delegate any function transferred to him to the head of any agency of the executive branch of the Government.

(d) Reorganization Plan No. 18 did not transfer to the Administrator any function with respect to:

(1) Buildings or space in buildings located on a military installation, or similar facility of the Department of Defense unless a permit for its use shall have been issued by the Secretary of Defense, or his duly authorized representative; or

(2) Space in Government-owned or leased buildings utilized for special purposes and not generally suitable for use by other agencies.

§ 644.134 Definitions.

(a) General-purpose space is space in buildings, including land incidental thereto, suitable for the general use of Government agencies, including but not limited to office space, general storage space, inside parking space, and warehouse space.

(b) Special-purpose space is space in buildings, including land incidental thereto, wholly or predominantly utilized for the special purposes of an agency, and not generally suitable for general-purpose use, including but not limited to hospitals, housing, and laboratories.

(c) Initial alterations are any improvements, additions, repairs or structural changes which are necessary to adapt leased premises or facilities to needs of the using service and which are approved prior to occupancy.

(d) Subsequent alterations or upgrades are any improvements, additions, repairs or structural changes which are found to be necessary to further adapt leased property to the needs of the using service after occupancy.

(e) Temporary improvements are those which can be removed without damage either to the property installed or the leased property, and to which the Government retains title.

§ 644.135 Lease authorization and approvals.

(a) *Title 10 Reports.* Under the provisions of 10 U.S.C. 2662, a lease proposal or renewal with an estimated annual rental in excess of $50,000 (gross rent as recited in the lease or for each project covered by one or more leases) must be reported to the Armed Services Committees of Congress. The General Services Administration (GSA) charges a Standard Level User Charge (SLUC) for furnishing space. For Title 10 reporting purposes, where GSA leases space at Corps request, the SLUC figure, if greater than the gross contract rental figure, shall control. For all leases which require Title 10 clearance, the Division/District Engineers will prepare and submit an Acquisition Report to HODA (DAEN-REA-L), WASH DC 20314 in the format shown in Figure 5-10 in EP 405-1-2. The report will support an action to obtain approvals from the Assistant Secretary of the Army (Installations, Logistics and Financial Management) and the Deputy Assistant Secretary of Defense (Installations and Housing) for the proposed lease prior to its submission to the Committees, and will serve as a basis for a hearing before the Real Estate Subcommittee of the House Armed Services Committee. Draft acquisition report pursuant to Title 10 for a lease renewal should be submitted at least 12 months in advance of the termination date of the lease. An explanation for any delay in forwarding the draft acquisition report is required in the transmittal letter if lease terminates prior to one year. Supporting data for this report will include the following:

(1) The geographical area in which the availability of Government-owned space was surveyed, together with reasons for limiting the area. The mission is to be set forth in detail, along with the reason(s) why space in this particular geographical area is essential to the performance of the mission.

(2) Current and required space (including parking) for each using service. For GSA leases the square feet should be the same as reported on the SLUC. Corrected square feet may be reported if a letter of concurrence from the appropriate GSA Region is provided.

(3) Statement covering all Government-owned buildings and facilities under the control of the military departments in that area, together with the reasons why each was rejected. Even though no space is available, a

list of the installations in the area will be furnished.

(4) Statement from (GSA) indicating that no space is available to that agency and other Federal agencies in the area or, in the alternative, a list of space that is available, together with reasons why the space is not acceptable to the using service.

(5) Identification of the headquarters and personnel making the determination that any available Government-owned space is not suitable.

(6) Original request, signed by the responsible head of the using agency that action be taken to obtain required clearances under 10 U.S.C. 2662. The using service shall advise whether or not a long-range use is contemplated.

(7) A statement of the current and anticipated contract rentals and current and anticipated SLUC for GSA leases. The SLUC should be as reported by GSA, unless an explanation is provided.

(b) *The Economy Act.* Section 322 of the Act of Congress approved 30 June 1932, as amended (40 U.S.C. 278a) provides that no appropriation shall be obligated or expended for the rent of any building or part of a building to be occupied for Government purposes at a rental in excess of the per annum rate of 15 percent of the fair market value of the rented premises at date of the lease under which the premises are to be occupied by the Government, nor for alterations, improvements, and/or repairs of the rented premises in excess of 25 percent of the amount of the rent for the first year of the rental term, or for the entire rental if the full term is less than one year. The provisions of section 322, as applicable to rentals, shall apply only where the rental to be paid shall exceed $2,000 per annum.

(c) *Exception to Economy Act.* The Act of Congress approved 28 April 1942 (40 U.S.C. 278b) provides that 40 U.S.C. 278a shall not apply during war or a national emergency declared by Congress or by the President to such leases or renewals of existing leases of privately-owned or publicly-owned property as are certified by the Secretary of the Army or the Secretary of the Navy or by such person or persons as he may designate, as covering premises for military or civilian purposes necessary for the prosecution of the war or vital in the national emergency. The provisions of the National Emergencies Act, Pub. L. 94-412 (90 Stat. 1255), 14 September 1976, shall not apply to the powers and authorities conferred by 40 U.S.C. 278b and actions taken thereunder.

(d) *Federal Property and Administrative Services Act.* The Administrator, GSA is authorized by 40 U.S.C. 490a(8) to alter and improve rented premises without regard to the 25 percent limitation of 40 U.S.C. 278a upon a determination by the Administrator that the alterations and improvements are advantageous to the Government in terms of economy, efficiency, or national security, and that the total cost of the proposed work to the Government for the expected life of the lease shall be less than the cost of alternative space which needs no such improvements.

(e) *Certificates of Necessity.* Department of the Army requests for Certificates of Necessity pursuant to 40 U.S.C. 278b will be forwarded to the Assistant Secretary of the Army through DAEN-REA-L. In any case requiring the issuance of a Certificate of Necessity, the amount requested will be sufficient to provide for all improvements which can be foreseen and that will be required during the term of the lease. Should unforeseen, essential requirements arise at a later date, an additional Certificate of Necessity to cover such work will be necessary. It is required that the using service furnish Division or District Engineers with a request for a Certificate of Necessity, explaining the circumstances, followed by a statement that the continued use of the leased premises, or the work to be performed, as the case may be, is vital in the national emergency. All requests by Division and District Engineers will include a completed ENG Form 869-R, 15 percent Valuation Certificate.

(f) *Approval—Chief of Engineers.* (1) The Chief of Engineers is authorized to approve leases where proposed temporary construction to be placed on land by the Government has an estimated cost equal to or in excess of the current market value of the property, or where the estimated rentals to be paid in the future, plus the cost of restoration, would exceed 50 percent of the current market value of the property.

(2) Leases, renewals, or lease extensions, which are controversial, unusual, or inconsistent with existing policies, require the approval of the Chief of Engineers.

(3) Any lease involving clearances by higher authority will be submitted to HQDA (DAEN-REA-L) WASH DC 20314.

(4) Leases, renewals, or lease extensions of industrial properties, other than for bakeries, laundries, and drycleaning facilities, are to be submitted to DEAN-REA-L for prior approval.

(5) Division and District Engineers, and Chiefs of the Real Estate Divisions, are authorized to perform emergency maintenance and repairs to leased premises not in excess of $500 where lessors refuse to perform, or under such circumstances that the lessor cannot perform. Where the cost exceeds $500, approval by DAEN-REA-L is required. The Comptroller General has ruled that where the lessor is obligated to perform maintenance and repairs under the terms of the lease and after demand of and refusal by the lessor, the Government makes such repairs in order to utilize the property to the fullest extent, the cost should be withheld from rental payments under the lease as soon as possible after work is completed (15 Comp. Gen. 1064). However, no rental payments will be withheld and no repairs made after demand and a refusal by the lessor, without prior approval of DAEN-REA-L.

(g) *Division and District Engineer Authorization.* (1) Division Engineers and their Chiefs of the Real Estate Division have been delegated, without authority to redelegate, leasing authority to approve leases where the annual rent, excluding services and utilities, unless said services and utilities are included in the recited rental consideration, is in excess of $25,000, but not in excess of $50,000. The $50,000 limitation will be strictly observed because of the reporting requirements under the provisions of 10 U.S.C. 2662.

(2) District Engineers and their Chiefs of the Real Estate Divisions are authorized to approve leases wherein the rental excluding utilities and services, unless included in the recited rental consideration, does not exceed $25,000 per annum.

(3) Except for space in the National Capital Region, Division and District Engineers are authorized to process all requests for the assignment of space in Government-owned buildings or leased space in the GSA urban centers to the regional GSA office having jurisdiction.

§ 644.136 Leasing guidelines.

Division and District Engineers, and the Chiefs of the Real Estate Divisions, are authorized to execute leases, or renewals of leases, negotiated in accordance with the procedures expressed herein, upon receipt of a proper request from an authorized command, service, or agency, subject to any required approvals or clearances. When there is no Real Estate Division, as such, but the Division or District Engineer has responsibility for leasing activities, he may delegate this authority to the officer or civilian in charge or real estate activities.

(a) *Leasing Requests.* Requests for space or land will be received by the Chief of Engineers, or the appropriate Division or District Engineer. Requests will include the data outlined in AR 405-10 (para 2-2c). Division and District Engineers will coordinate space or land requirements with appropriate commanders to assure responsive lease processing. If required, a Lease Planning Report, or narrative report covering essential information, will be furnished the using service for review and recommendations. Funding requirements, usually in the form of fund citations, will have been met by the using service prior to lease execution. If approvals by higher authority are required, the Division or District Engineer will initiate appropriate action to obtain the necessary clearances.

(1) *Army Commands.* Upon receipt of a request from an Army Command, negotiations for obtaining acceptable leases will be carried to completion in

accordance with present procedures for military leases.

(2) *Air Force.* Upon receipt of a lease request approved by Headquarters, U.S. Air Force, or an Air Force major command, the appropriate Division or District Engineer will negotiate and lease the required property. The provisions of AFR 87-1 prescribe the Department of the Air Force policies and procedures that are to be followed.

(3) *National Guard.* All requests for the leasing of facilities for National Guard purposes will emanate from the Chief, National Guard Bureau. Army National Guard leasing requirements will be transmitted through DAEN-REZ-R to DAEN-REA-L. Air National Guard requirements will be transmitted to DAEN-REA-L through Headquarters, U.S. Air Force.

(i) Upon receipt of authority from the Chief of Engineers, negotiations will be conducted for obtaining an acceptable lease, in accordance with the approved lease request. The appropriate United States Property and Fiscal Officer generally makes separate service contracts for utilities, except sewage disposal, and services, and is responsible for the maintenance of all buildings used exclusively by the Air National Guard. Representatives of the Corps of Engineers do not participate in obtaining contracts for utilities and services. In cases where such a contract is impracticable, the lease may include any and all utilities and services as part of the rental consideration, with the cost of the various services and utilities to be itemized. The "use clause" in the lease will provide for occupancy of the premises for "Government purposes". The wording, "For use by the Air National Guard and/or United States Air Force, and, in time of war or national emergency, by other units of the Armed Forces of the United States or for any other use by the Federal Goverment," will be acceptable if it is not possible to insert the for "Government purposes" provision.

(ii) Leases made by representatives of a State with private parties for use of premises by the National Guard of the State involved, under which State funds are used for rental payments, are not the responsibility of the Division or District Engineer.

(4) *Department of Energy/Nuclear Regulatory Commission.* Space is acquired by these agencies direct from GSA in the designated urban centers pursuant to Reorganization Plan No. 18. In instances where general purpose space is not obtained through GSA and instances involving the leasing of special-purpose space, managers of field offices of subject agencies are authorized to initiate requests to Division or District Engineers for the leasing of properties where the net per annum rental does not exceed $50,000. Leasing of properties where the net rental per annum exceeds $50,000 requires the prior approval of the appropriate agency head, i.e., the Secretary of Energy, the Chairman of the Nuclear Regulatory Commission, or their designees.

(5) *Metropolitan Washington, D.C.* All requests for leased space in the National Capital Region will be processed in accordance with DOD Instruction 5305.5.

(b) *Requirements Survey.* The availability, use, and adaptability of property owned by the Government, whether under control of the GSA or other agencies, shall be thoroughly explored before additional space is leased, or existing leases are renewed, or construction commenced. Particular attention is to be given to the availability of space, or land, at military reservations, camps, posts, or stations.

(1) A statement covering the nonavailability of Government-owned space, or if such is available and not suitable, reasons why it is not suitable, for occupancy by the requesting using service, should be made for each lease executed by the Corps of Engineers, excluding family housing leases.

(2) Suitable privately-owned space shall be acquired only when satisfactory Government-owned space is not available. Rental charges will be consistent with prevailing rates in the community for comparable facilities.

(3) The quality of office space for Government occupancy shall be appropriate for the efficient and economical performance of required operations, affording employees safe, healthful and convenient facilities.

(4) Full consideration shall be given to the efficient performance of the mission and programs of the using service.

(c) *Government-Owned and General Services Administration Furnished Space.* If Government-owned space is available, the Division or District Engineer will inform the using agency, and details of occupancy will be developed. If it is necessary for GSA to lease space, the Division or District Engineer will make a careful review to determine if there are any statutory or regulatory limitations involved. If so, appropriate action will be taken to satisfy the limitations. During the processing of all GSA space assignments and leases, the Division or District Engineer is the only official contact representative with GSA. This procedure is to be emphasized at all time with the using service.

(1) The Division of District Engineer will submit a Standard Form 81, Request for Space, to the appropriate GSA Regional Office for space assignment in urban centers under the jurisdiction of GSA. The requirement to this form applies to lease renewals or lease supplements, and for space assignments in Federal office buildings. Excluded from this procedure is a proposed space assignment in the National Capitol Region.

(2) Except for the acquisition of general-purpose space of 2,500 square feet or less, outside the designated urban centers, and special-purpose space of 2,500 square feet or less, irrespective of the location, the need for any type of building space will be made kown to the appropriate GSA Regional Office by filing Standard Form 81, Request for Space.

(3) The designated urban centers are listed in Figure 5-11 in EP 405-1-2.

(d) *Advertising.* As a general rule, procurement of space will be by formal advertising. However, in leasing certain types of premises where only one location will serve the Government's purpose, such as municipal airports, recruiting stations, and similar facilities, negotiations without advertising are permissible. In instances where building space is needed and the requirement cannot be met through the use of existing buildings, there must be advertising to solicit bids for the furnishing of the space. In every instance, it is essential that efforts be made to seek competition. For each lease, a statement will be prepared concerning competition in the solicitation for space or land and Standard Form 1036, Statement and Certificate of Award, will be used. Where specific space or land is needed, and competition is therefore not involved, the facts and circumstances will be fully explained and such explanation will be made a part of the lease file for future reference.

(e) *Appraisals.* Appraisals are required as a basis for making rental determinations in all leases except those for a nominal consideration. At the discretion of the Division and District Engineers, and the Chiefs of the Real Estate Divisions, formal or detailed appraisals can be dispensed with for leases wherein the annual rent does not exceed $5,000. Where the rental of a building or part of a building, or family housing unit, exceeds $3,600 per annum, excluding services and utilities, it may be necessary to estimate the fee value of the property contemplated for leasing to determine whether or not the rental rate is in excess of 15 percent of the fee value of the property. For family housing leases, the opinion of fee value will be in short summary form and will be supported by general evidence of comparable values of the unit to be leased. If the proposed annual rental, excluding services and utilities, of a family housing unit exceeds 15 percent of the estimated fee value, the unit will not be leased.

(f) *Determination of Valid Interest.* Persons executing leases for and on behalf of the United States of America will satisfy themselves, before executing leases, that the prospective lessors have an interest in the real estate which will assure the validity of the lease. Where leased lands are used as a site for contruction, the land records of the county will be examined by a staff attorney familiar with land title records, who will execute a certificate that he has examined the said records and that title is vested in the lessor, subject to the infirmities, liens and encumbrances noted in the certificate. In lieu of such examination, a certificate from the Register of Deeds, County Recorder or other qualified officer is acceptable. If considered advisable in unusual cases, title evidence may be obtained from commercial sources.

(g) *Outstanding Rights and Damages.* (1) Where the land is subject to outstanding oil, gas, mineral, or similar interests, the Division or District Engineer will determine, from the appropriate command, in advance of the consummation of the lease, whether the continued exercise of the mineral or outstanding rights will interfere with the contemplated use of the premises.

(2) Where buildings, structures, or growing crops are located on land to be leased, a determination will be made by the Division or District Engineer, in coordination with the appropriate command, as to whether they will interfere with the use of the premises.

(3) Where the lessor will not be permitted to harvest crops or remove improvements and timber which will be destroyed by the Government, the appraised value thereof will be determined, and such amount will be included in the rental for the initial term of the lease, together with an express provision relieving the Government of restoration.

(4) Leases of land for bombing, artillery, rifle ranges, and other extraordinary usage will specify that the leased premises are to be used for such purpose, and an effort will be made to include in the lease a provision waiving restoration and claims for damages, particularly where the premises are wastelands or unproductive.

(5) Where the lessor will not consent to a waiver of restoration, the estimated value of such damage, if it can be determined in advance, will be included in the rental for the initial term of the lease, and the lease will contain an express provision relieving the Government from responsibility for restoration.

(6) If restoration is not waived, and the damages cannot be determined in advance, a provision may be included in the lease to the effect that the rental payments do not include compensation for damages arising from the use of the premises for the purpose leased and that, upon termination of the lease, the damages, mutually determined, will be paid by supplemental agreement to the lease. In event the amount of the loss or damage cannot be mutually determined, the lessor may file a claim for the alleged loss or damage in accordance with Subpart H.

(h) *Services and Utilities.* Services, such as janitorial, heat, air conditioning, light and water, should be included in leases for building space wherever possible. Whether services are paid for as part of the rent or by a service contract, the time period for furnishing heat, air conditioning and light, i.e., usual business hours, 24-hour basis, Saturdays and Sundays, should be clearly stated.

(i) *Other Contracts.* The negotiation and execution of contracts not involving an interest in real estate are the responsibility of the services concerned.

(j) *Condition Surveys.* (1) Whenever possession of any premises is acquired by lease or other agreement, or by condemnation for a term of years, the Division or District Engineer will cause a survey and inspection of the condition of the real and personal property to be made as of the time the Government takes possession.

(2) The survey and inspection required above will be made jointly with the lessor or his duly authorized representative. The report will be signed by both parties.

(3) The initial survey report must be made with great care since it is the basis for future restoration claims by a lessor. The use of photographs is encouraged. Full explanatory data covering condition of the premises will be added to the report if, in the opinion of the Chief, Real Estate Division, a useful purpose will be served thereby. The survey report of real property, and the inventory and condition report of personal property, will be made with care, as the condition reflected as of the date of initial occupancy will be compared with the condition shown by the terminal reports made upon vacation of premises.

(4) A survey is not required of unimproved land where an appraisal has

been made and the condition of the land is set forth by the appraiser and made a part of the record.

(5) A survey will be made wherever property of another Federal agency is used, with the exception of post offices and Federal buildings. In the event privately-owned buildings, crops, or other property, are on the Federal property, a report will be made outlining the terms and conditions under which they were placed thereon, and the value thereof will be appraised as of the date of possession.

(6) Normally, ENG Forms 3143 and 3143A, Joint Survey and Inspection of Condition of Government Leased Property, are adequate for the joint survey and inspection. In certain cases, narrative reports may, at the discretion of the Division or District Engineer, be considered preferable; however, local forms will not be developed for this purpose.

(k) *Possession.* Possession of real property will not be taken until required approvals and clearances are obtained and a lease is executed. When requested by an appropriate command, rights-of-entry for exploration and survey, or construction, will be obtained in accordance with instructions in §§ 644.155 through 644.157.

(l) *Condemnation of Leaseholds.* Where the required leasehold interest cannot be acquired by a negotiated lease, the recommendation of the Division or District Engineer for the institution of condemnation proceedings will be submitted to HQDA (DAEN-REA-C) WASH DC 20314, in accordance with § 644.121, setting forth the negotiations that have been conducted with the property owner(s) and all other factors supporting the recommendation.

(m) *Decease of Lessor.* (1) Any claim on account of death of a lessor (except uncurrent depository check claims) may be settled without submission to the Chief of Engineers where no doubt exists as to the amount and validity of the claim or as to whom payment may be made under the laws of the domicile of the decedent.

(2) Any claim for rent or services due a deceased lessor which is considered doubtful will be forwarded to HQDA (DAEN-REM) WASH DC 20314 in accordance with Subpart H.

(n) *Recording Leases.* If the property is located in a State requiring the recording of leases, all statutory requirements will be met. Leases, and supplemental agreements prior to termination, involving property upon which substantial Government improvements are to be constructed, will be recorded in all cases.

(o) *Change in Ownership.* (1) When the title to premises leased to the Government is transferred, the contracting officer shall satisfy himself that the new owner has a valid interest in the premises covered by the lease, and thereafter enter into a supplemental agreement between the old and new owners and the Government, for distribution in the same manner as the original lease.

(2) Upon being notified or otherwise determining that a foreclosure proceeding has been filed against the leased premises, or that the enforcement of a deed of trust or mortgage is imminent, the Division or District Engineer will take such action as is appropriate under State laws for protection of the United States. This would consist of filing by the United States Attorney with the court, or with the trustee, receiver, or commissioner, as the case might be under local law, of a notice of the Government's lease on the property, with request that the foreclosure proceedings be made subject thereto. If the proceeding is made subject to the lease, an abstract of such proceeding will be made, certified by a staff attorney, and distributed in the same manner as the original lease. If considered advisable, a supplemental agreement to the old lease will be made with the new owner; or a superseding lease may be executed and distributed. If the proceeding results in vesting title in a new owner, free and clear of the Government's lease, attempt will be made to negotiate a new lease; if this fails, condemnation action will be taken sufficiently early to protect the interests of the United States. Negotiation and condemnation in this latter type of situation must be based on a current appraisal.

(p) *Supplemental Agreements.* Modification of existing leases will be in the form of supplemental agreements and will be prepared, executed, and distributed in the manner prescribed for the original lease. Where a supplemental agreement provides for an increase in space at an increased rental, the supplemental agreement should contain appropriate recitals of this fact, and provide that the Government, thereafter, may, upon 30 days notice, partially reduce, or discontinue, the use of the space covered by either the supplemental agreement, the basic lease, or both. Supplemental agreements enlarging or reducing space will show the total area and rental comprising the basic lease and preceding supplemental agreements.

(q) *Annual Review of Leases.* Annual review of leasing requirements and space assignments from GSA are to be initiated by the Division or District Engineer not later than one year before the end of the lease term for each lease.

(1) Special attention will be given by Division and District Engineers to leases which expire by their own terms and continued occupancy is required at annual rentals of $50,000 or more. These leases require approval by the Department of Defense and reporting to the Armed Services Committees of the Congress by the Chief of Engineers. An Acquisition Report together with full justification, as set forth in § 644.135(a), in support of each lease (or project covered by more than one lease) must be furnished. For leases in which it is not clear whether Title 10 reporting is required, DAEN-REA-L will be informed of the facts for decision. Attention will be given also to existing leases having annual rentals between $30,000 and $50,000. It is probable that current appraisals will indicate annual rental rates in excess of $50,000 and, therefore, require a Title 10 report.

(2) If the using command anticipates that there will be further need for the leased property, and the total estimated rentals to be paid by the Government, excluding utilities and services, for the additional period, plus the cost of restoration, will exceed, 50 percent of the estimated current market value of the property, DAEN-REA-L will be informed of all details in order that the review required by paragraph 1-8, AR 405-10, may be made. Only estimated future rent payment is to be considered and not the rental paid in the past for the property. In applying this formula, if the period of future use cannot be ascertained but it is likely that a property will be used for a long period of time, use a period of five years for calculations.

(r) *Lease Renewals and Extensions.* (1) Lease entered into under authority of the annual appropriation acts may include a provision for automatic renewal after expiration of the initial term subject to the availability of appropriated funds. However, if the property is still needed after lease expiration, a new lease is required and the old lease will not be extended by supplemental agreement for the new term. Where the lease requires notice in writing to be given to the lessor to exercise the option of renewal, notice will be served by the use of ENG Form 221, Notice of Renewal of Contract or Lease, in accordance with the terms of the lease. The notice, properly addressed, will be sent by certified mail, with return receipt requested. Adequate time, in addition to the number of days specified in the lease, will be allowed for delivery to, and receipt by, the lessor. The Division or District Engineer will maintain adequate records to assure prompt service of notice to avoid the lapse of leases.

(2) No lease will be renewed or kept in existence unless it has been administratively determined, through advertising or otherwise, that other suitable property at a lower rental is not obtainable. At all times, and in particular during the lease renewal review period, the Division or District Engineer will take cognizance of the availability of property in the area of the using service that is Government-owned, or property under GSA control.

(s) *Payment of Rents.* (1) One of the most important factors involving good relationships between the Government and the lessor is the prompt payment of the rent. Under existing regulations, the rent is paid by the using commands. The Division or District Engineer makes rental payments for leases when the Corps is the using service and for recruiting facilities, since the Chief of Engineers is the Department of Defense Executive Agent for recruiting facilities acquisition. It is therefore appropriate for the Division or District Engineer to inquire periodically of the using commands whether delays in processing payments are encountered. If payments are not being made within seven working days after payment is due, appropriate action will be taken to correct the delay; if no action is taken after a reasonable time allowed for correction of procedures, DAEN-REA-L will be informed fully of the facts and an investigation will be conducted.

(2) Prior to payment, the Division or District Engineer, or his designee, will certify for submission to the Disbursing Officer that the leased property was occupied or available for use. The following certification, contained on Standard Form 1166, Voucher and Schedule for Payments, is used: "I hereby certify that the leases identified hereon were in effect for the month (or other period) indicated, and that the space was occupied, or available for use, by the Department of the Army."

§ 644.137 Maneuver agreements.

Joint training exercises or maneuvers are conducted by elements of the Department of Defense. Land use requirements vary with the exercise objectives and the force elements which participate. The Corps participates in the planning and acquires rights to use land and other facilities for Department of the Army exercises. The current Memorandum of Understanding by Department of the Army, United States Readiness Command (USCINCRED), and United States Army Forces, Readiness Command (USCINCARRED) on acquisition of maneuver rights for United States Readiness Command (USREDCOM) Joint Training exercises is included as Figure 5-13 in EP 405-1-2. This Memorandum covers timing of requests for preliminary surveys, real estate studies, funding and acquisition of maneuver rights. The Corps also responds to requests from other Department of Defense commands for maneuver rights, and the same procedure is envisioned although no Memoranda of Understanding have been entered into. Upon receipt of a request for real estate services, an estimate of the funds required for the report should be forwarded to the using command.

(a) *Procedures.* The appropriate Division or District Engineer will be responsible for negotiating maneuver agreements and short-term leases and, after the maneuver is completed, will be responsible for negotiating restoration settlements and/or releases, as appropriate. Real estate acquisition will be in the form of agreements with landowners, granting the right to conduct maneuvers at a given time, or periodically. Short-term leases for exclusive use may also be acquired for special areas (such as headquarters areas, radio relay sites, base camp sites, field hospital sites and supply dumps), and buildings needed for warehouses, ordnance shops and similar purposes directly related to the maneuver. Permits will be obtained to cover the use of lands under the jurisdiction of another Government department or agency.

(b) *Claims and Restoration.* Notwithstanding the assignment of restoration responsibility, understanding may be reached with the maneuver director at field level whereby the command will assume responsibility for settlement of real estate damages using claim funds. However, in instances where the damage exceeds the monetary claims jurisdiction of the Army Commander pursuant to AR 27-20 and is cognizable as a contractual obligation under the maneuver permit, settlement will be accomplished by the Division or District Engineer either by supplement to the permit or by processing a claim under AR 405-15 (see § 552.16 of this chapter) since the Division or District Engineer can usually accomplish settlements more quickly for claims in excess of that amount. Therefore, it should be suggested to the maneuver director that all claims, cognizable as a contractual obligation, in excess of his monetary claims jurisdiction be handled by the Division or District Engineer. Funds appropriated for field exercises and maneuvers are allotted to Army Commanders and include administrative costs. The reporting requirements included in Figure 5-13 in EP 405-1-2 will be established by the Chief of Engineers upon receipt of a specific request from the using command to acquire maneuver rights.

§ 644.138 Family housing leasing program.

Section 515 of Pub. L. 84-161 (69 Stat. 324), as amended by Pub. L. 95-82, approved 1 Aug 1977, authorizes the expenditure of an average of $280 per month for each military department for housing facilities in the United States (other than Alaska and Hawaii) and in the Commonwealth of Puerto Rico, and an average of $350 per month for each military department for housing facilities in Alaska, Hawaii and Guam. In both cases the maximum rental rate per unit per month including utilities, operations and maintenance is $450. These rental figures are subject to change each year in the annual Military Construction Authorization Acts. Updated rental figures should be obtained from the current MCA Act. The Department of Defense allocates to each department of the military the number of units it can acquire pursuant to the authorization, and each year Division and District Engineers are informed of the unit allocations by the Chief of Engineers.

(a) *Leasing Requests.* The Departments of the Army and Air Force direct their requests for the leasing of family housing units to the Division or District Engineer. Each military element involved has the responsibility of maintaining the national rental average. Each command prescribes the procedures to be followed in acquiring family housing units. Such procedures which include size of accommodations and maximum rental rate will be followed by the Division or District Engineer.

(b) *Use of Available Housing.* Priority shall be given to the leasing of adequate Federal Housing Administration (FHA) and Veterans Administration (VA) held units to the extent that such units may be available at locations which are granted lease allocations. FHA Form 2372A, as modified, will be used in leasing FHA housing for use as public quarters by military personnel. A similar form, modified as needed, will be used for VA held housing units.

(c) *Nondiscrimination Provision.* All leases for family housing units which are executed on behalf of the United States shall contain the following nondiscrimination clause: "It is understood and agreed that the Government will assign the demised premises to military personnel in accordance with Executive Order 11063, dated 20 November 1962, which provides that housing and related facilities shall be available without discrimination among tenants because of race, color, creed, sex or national origin."

(d) *Pest Control.* In agreement with the lessor, whenever possible, the lessor will affirmatively assume responsibility for pest control in family housing units. The following clause will be included in family housing leases: "It is understood and agreed that the lessor will be responsible to provide pest control measures and pesticides, which conform to local health department regulations, to keep the premises free from pests and in a tenantable condition." It is intended that the occupant will maintain the leased premises in a clean and sanitary condition in conformance with normal standards of good housekeeping, and that the lessor will furnish leased housing in pest-free condition and maintain the premises free of pest infestation.

(e) *Leasing Actions.* (1) Division and District Engineers will proceed with acquiring the family housing units within the framework of the leasing requests. Care is to be taken to assure that there are no violations of the Economy Act, i.e., the net rental will not exceed 15 percent of the estimated fee value of the space or building contemplated for leasing.

(2) At the discretion of the Division or District Engineer and the Chief of the Real Estate Division, Standard Form 2B may be used for family housing leases, regardless of the rental rate.

(3) Emergency repairs may be accomplished in accordance with § 644.135(f)(5).

(f) *Supplemental Payments.* All leases for family housing units which are executed on behalf of the United

States shall contain the following clause prohibiting supplemental payments: "The Lessor hereby agrees that the rental consideration specified herein is the only consideration to be received for the demised premises and includes payment for all utilities, maintenance and services specified herein. No other remuneration will be paid by the Government's occupant, members of his family, or any other person on their behalf."

§ 644.139 Leases for civil works purposes.

Division and District Engineers and the Chiefs of the Real Estate Division are authorized to execute leases, and renewals of leases, for river and harbor or flood control purposes, subject to necessary approvals and clearances. The provisions of 10 U.S.C. 2662, which require reporting of certain leases proposals to the Armed Services Committees of the Congress, do not apply to leases for civil works.

(a) *Approvals Required.* The following lease actions for civil works projects will be referred to DAEN-REA-L for consideration:

(1) Where the annual rental is in excess of $50,000.

(2) Where the leasing involved is for space for both military and civil functions, and the rental for the portion used for military purposes is in excess of $50,000. The report required is covered in § 644.135(a).

(b) *Records.* The originals of leases for civil works purposes, together with supporting data, will be retained at the Division or District Engineer offices for site audit in accordance with Section 7530, "General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies."

§ 644.140 Physical protection.

It is essential that the Division or District Engineer make provision for the physical protection for all facilities under Corps control. Coordination with state, county, and city law enforcement officials as well as the U.S. Attorney's Office is required. These officials should be alerted at the first indication of possible disturbances. The U.S. Attorney's Office should be provided with an up-to-date list of the locations of such facilities.

(a) *Self-Protection Plan.* Space or property controlled by GSA is the responsibility of GSA for physical protection. In accordance with 41 CFR 101-20.504, a Facility Self-Protection Plan is to be established by agencies in GSA-controlled space. This requirement should be coordinated with appropriate GSA Regional personnel. A similar plan should be made operational, where feasible, in other space over which the Corps has responsibility.

(b) *Funding.* Space under GSA control may require protection and the GSA Regional Offices may not have funds. In these situations, the facts will be made known to DAEN-REA-L, accompanied by a request for funds. Likewise, for Corps leases, funds for physical protection shall be requested from DAEN-REP if they are not already available to the Division or District Engineer.

§ 644.141 Alterations and construction on leased real property.

(a) *General.* Division and District Engineers will be available to the military elements for consultation and review of requirements involving construction on leased land or in leased space. Detailed instructions are furnished in DOD Directives 4165.12, 4165.16, 4165.20, 4270.24, 5160.58, 7040.2; DOD Instruction 5305.5; Army Regulations 140-485, 405-10, 415-25, 415-35, 420-10. Section 644.135(b) covers the requirements of the Economy Act which are applicable to alterations and construction on leased real property. The work to be performed must be essential. Guidelines are furnished as follows:

(1) The proposed alterations and improvements must be advantageous to the Government in terms of economy, efficiency, and, where applicable, to national security.

(2) For office space, the cost should be less than the cost of other space that is available and which does not require alterations or improvements to any appreciable extent.

(3) Due regard is to be given to the convenience of the public that is served and the maintenance and im-

provement of safe and healthful working conditions of employees.

(4) Where the proposed temporary construction at a leased facility has an estimated cost equal to or in excess of the current market value of the property, the facts will be reported promptly to DAEN-REA-L.

(b) *Initial and Subsequent Alterations.* (1) Initial alterations to facilities leased by the Corps are the responsibility of the appropriate Division or District Engineer.

(2) Effort will be made to include all required alterations in the rental package with the lessor performing all of the work. Careful attention will be given to possible violations of the Economy Act. Payment for initial alterations may be in a lump sum or by the month with the rent, provided the provisions of the Economy Act are complied with and the alterations costs are stated separately in the file or in the voucher.

(3) Alterations or improvements of any nature in GSA furnished space are the responsibility of GSA. Under certain circumstances, GSA may require a Certificate of Necessity in order to perform the required construction.

(4) Although alterations and improvements subsequent to occupancy are not the responsibility of the Corps, the Division or District Engineer should always review subsequent alteration projects to determine whether or not the limitations of the Economy Act are applicable. See AR 415-34, AR 415-35, and AR 420-10 for procedures and instructions.

(c) *Army National Guard.* No initial alterations regardless of cost will be made to properties leased for the Army National Guard without prior approval of the Chief, National Guard Bureau. (Funds will be made available by the National Guard Bureau.)

(d) *Air Force.* All alterations to premises leased for the Department of the Air Force, including Air Force Reserve and Air National Guard Units, are the responsibility of that Department including the issuance of any Certificate of Necessity for Department of Air Force elements. The only exception is the leasing and modification of leased premises for recruiting facilities.

(e) *Recruiting Facilities.* The Chief of Engineers, as the Department of Defense Executive Agent for recruiting facilities, is responsible for initial alterations for all recruiting facilities located on military reservations or leased by the Corps. This responsibility includes recruiting offices and recruiting main stations and detachments, whether single-service or collocated. However, as to recruiting facilities acquired by GSA, all alterations are the responsibility of GSA and processing is accomplished through the Division or District Engineer.

(f) *Permanent Construction Requirements.* If permanent construction is to be placed on land, the Government must have fee title or acquire title to the land or a permanent easement must be secured, with the following exceptions:

(1) Real property, including land or buildings, which the Government currently holds the right to reuse by exercise of the National Security Clause.

(2) Real property, including land or buildings, which the Government holds the right to reuse by exercise of a National Emergency Use Provision.

Since such rights apply only during the period or periods of national emergency and are extinguished by the termination thereof, every effort will be made to negotiate a lease covering such property under terms that would provide the Government the right of continuous possession for a minimum of 25 years.

(3) Real property required for installation of utility lines and necessary appurtenances thereto, provided a long-term easement or lease can be secured at a consideration of $1.00 per term or per annum.

(4) Real property required for air bases, provided such property can be acquired by lease containing provisions for:

(i) Right of continuous use by the Government under firm term or right of renewal for a minimum of 50 years.

(ii) A rental consideration of $1.00 per term or per annum.

(iii) Reserving to the Government, title to all improvements to be placed on the land and the right to dispose of such improvements by sale or abandonment.

(iv) Waiver by the lessor of any and all claims for restoration of the leased premises.

(v) Use of the property for "Government purposes" rather than for a specific military purpose.

(5) Property required for facilities for the Reserve Components of the Armed Forces, provided such property can be acquired by lease containing provisions detailed in paragraph (f)(4) of this section. Whenever possible, the insertion in a lease of a provision restricting the use of land to a specific purpose will be avoided; use a term such as "Government purposes".

(6) Property required for air defense sites, provided such property can be acquired by lease containing provisions in paragraphs (f)(4)(ii), (iii), and (iv) of this section and the right of continuous use by the Government under a firm term or right of renewal for as long as required for defense purposes.

(7) Assistant Secretary of Defense (MRA&L) approval is required when leases for air bases, Reserve Components facilities, or air defense sites can be obtained containing some but not all of the above listed provisions. Such approval is also required for leases for all other types of installations upon which permanent construction is to be placed by the Government when leases can be obtained containing similar provisions. In all cases, it must be in the best interest of the Government to acquire a lesser interest than fee title.

(8) Construction projects estimated to cost less than $25,000 will not be considered a permanent construction for purposes of the above policy.

(g) *GSA Reimbursement.* Reimbursement to GSA for Standard Level User Charges (SLUC) and other costs incident to leasing will be in accordance with the applicable provisions of the Federal Property Management Regulation.

(h) *Nominal Rent Leases.* (1) Where premises are occupied by the Government at a nominal rent or rent-free basis, any alterations, improvements, and repairs necessary for occupancy may be considered as a cost of occupancy, i.e., in lieu of rent, for each year of the rental term. However, the total cost of such alterations, improvements, and repairs, plus the nominal rental, during any year of the rental term may not exceed 15 percent of the fair market value at the date of the lease, unless the total cost plus nominal rental does not exceed $2,000 per annum.

(2) When rental plus amounts to be spent by the Government for alterations, improvements, and repairs total more than $2,000 and more than 15 percent of the fair market value of the premises at the date of the lease, a Certificate of Necessity is required.

(3) A Certificate of Necessity is not required for the cost of installing equipment, apparatus, appliances, machinery, fixtures, movable partitions, etc., which are not intended to become an integral part of the building and which may be removed without injuring or defacing the item or the building. Such property is considered to be the property of the Government. The lease or a supplement thereto should provide for the installation and removal of such equipment, etc.

(4) Under the limitations in 40 U.S.C. 278a, not more than 25 percent of the net rental for the original lease period, if less than one year, may be expended before a lease is actually renewed. If the whole period, including renewals, is less than a year, not more than 25 percent of the rent for such whole period may be expended for alterations, repairs, and improvements (20 Comp. Gen. 30; 29 Comp. Gen. 299). Where a lease, entered into by the Government for an original term of less than a year, is renewed for the following fiscal year, the net rental for the first year of the rental term, as distinguished from the original term, is for consideration in the computation of the amount that may be paid under the 25 percent limitation, after the lease is actually renewed.

(i) *Items Not Within the Purview of the Economy Act.* (1) The limitations in 40 U.S.C. 278a are not applicable to leases of unimproved land (38 Comp. Gen. 143).

(2) Where fixtures, alterations, and improvements are of such characters

to be of a temporary nature, and are not permanently attached to the realty so as to prevent removal thereof without destroying their usefulness or damaging them or the realty, they do not constitute alterations or improvements of the leased premises within the meaning of 40 U.S.C. 278a and therefore do not fall within the 25 percent limitation of that Act. Title to such temporary fixtures, alterations, and improvements remains in the Government (18 Comp. Gen. 144; 20 Comp. Gen. 105).

(3) Upon termination of leases, restoration of leased premises to the original condition is not considered an alteration within the purview of 40 U.S.C. 278a.

(4) When the Government is required by the terms of the lease to maintain the leased premises, such maintenance, together with the cost of such improvements and alterations as may be made by the Government, may not exceed the 25 percent restriction of the Act.

(5) Leaseholds acquired through condemnation proceedings are excluded from the purview of the Act of 30 June 1932, as amended (40 U.S.C. 278a).

(j) *Architectural Barriers Act.* The Architectural Barriers Act of 1968 (Pub. L. 90-480), 82 Stat. 718, 142 U.S.C. 4151, et seq., as amended, requires that when Federal funding is used in the design, construction, or alteration of certain buildings or facilities, the buildings or facilities must be designed, constructed or altered to insure that physically handicapped persons will have ready access to, and use of, such buildings. In the Corps' leasing program, when Federal funds are used to make improvements to leased premises, it is necessary that the plans and specifications for the construction or alteration work be approved in accordance with guidelines published by the American National Standards Institute (ANSI), as implemented by DOD Construction Criteria Manual 4270.1-M, Section 5-1.6.

§ 644.142 Lease forms and instructions.

ENG Form 856 will be used for Corps of Engineers leases in the United States and possessions, and overseas, for the leasing of unimproved land. ENG Form 527 is recommended for leases of improved property in overseas areas. Standard Forms 2, 2A, or 2B (short form) will be used for all Corps of Engineers leases of improved property in the United States and possessions. Standard Form 2B is limited to rentals not exceeding $3,600 per annum. The General Provisions are on the reverse side of the short form lease.

(a) *Mandatory Clauses.* The following clauses must be included in all Corps of Engineers leases:

(1) Officials Not to Benefit clause (para 15 of ENG Form 527) is required by 18 U.S.C. 431.

(2) Gratuities clause (para 16a of ENG Form 527) is required by 5 U.S.C. 174d.

(3) Covenant against Contingent Fees (para 14, ENG Form 527) is required by 10 U.S.C. 2306(b).

(4) An Examination of Records clause (para 17, ENG Form 527) is required by 10 U.S.C. 2313(b). Exceptions to the use of this clause in 10 U.S.C. 2313(c) are permitted when the contractor is a foreign Government or agency thereof, or when the laws of the country involved preclude it. Also, if the Head of the Agency determines, with the concurrence of the Comptroller General, that the use of the clause would not be in the public interest, it may be omitted in leases covering land in foreign countries.

(5) The Nondiscrimination clause (Executive Order No. 11063, dated 20 November 1962) is required in all leases in the United States. It is desirable, but is not considered mandatory in overseas leases.

(b) *Hold Harmless Clauses.* "Hold harmless" clause will not normally be added to the lease forms. Where lessors insist upon such a clause, however, the following is suggested for use: "The Lessors (licensors) shall not be responsible or liable for injuries to persons or damage to property when such injuries or damage are caused by or result from the Government's use of the premises under the terms of this agreement and are not due to the negligence of the Lessors."

(c) *Escalator Clauses.* In those cases where a lessor expresses an unwillingness to enter into a lease, extending for a number of years, with a rental consideration that includes a fixed amount for utilities, the following clause may be inserted in the standard lease: "After the first term of the lease, the Lessor or the Government may, by giving notice at lease 90 days prior to the anniversary date of the lease, request an adjustment in rental payments based on an increase or decrease in the cost of utilities. The request must be supported with full justification to include documentary evidence of actual utility costs incurred by the Lessor which are in excess of the amounts estimated at the beginning of the lease term. The requested adjustment in rent will be subject to negotiation, and if granted, will be provided by a Supplemental Agreement to this lease."

ACQUISITION OF RIGHTS-OF-ENTRY

SOURCE: Sections 644.155 through 644.157 appear at 44 FR 31125, May 30, 1979, unless otherwise noted.

§ 644.155 General.

Sections 644.155 through 644.157 describe the procedures of the Corps of Engineers relative to obtaining rights-of-entry on lands for both military and civil works projects and in the Corps' acquisition programs for other Federal Government agencies. These procedures are applicable to all Division and district Engineers having real estate responsibilities.

§ 644.156 Definition.

A right-of-entry is a bare authority to do a specified act or series of acts upon non-Government-owned property or non-Government-controlled property without acquiring any estate or interest therein. The principal effect of a right-of-entry is to authorize an act which, in the absence of the right-of-entry, would constitute a trespass. The written instrument furnishes evidence of the permission granted to the government and the obligations, responsibilities, and liabilities assumed by the Government. It does not authorize any uses of the property by the Government other than those specified in the instrument.

§ 644.157 Procedures.

(a) ENG Form 1258, Right-of-Entry for Survey and Exploration, will be used to obtain authority from the owner of lands to be used for the purpose of making surveys, test borings, and other exploratory work as may be necessary to complete the particular investigation.

(b) ENG Form 2803, Right-of-Entry for Construction, will be used to obtain authority from the owner of lands to be used for construction purposes when all of the following conditions apply:

(1) A Real Estate Directive has been issued on an Army (military) or Air Force project, or the Chief of Engineers has approved acquisition in connection with a civil works project or for another Government agency.

(2) The construction schedule does not allow sufficient time to secure the right of possession by normal acquisition procedures.

(c) Upon execution of an ENG Form 2803, a copy thereof shall be forwarded to HQDA (DAEN-REA-L) WASH DC 20314 on Army Military and Air Force acquisitions, and in all other cases to HQDA (DAEN-REA-P) WASH DC 20314, together with a proposed schedule of final acquisition of the necessary interests in real estate. If final acquisition is not contemplated within six months from the date of the right-of-entry, an explanation should also be furnished as to the reason for the delay.

(d) Division and District Engineers may modify ENG Forms 1258 and 2803, where necessary, to meet requirements of landowners, provided such modifications do not increase the scope of the liability or responsibility of the Government over that contained in the standard forms.

(e) It is necessary to recognize not only the effects of entry upon a particular parcel of land, but also the effects of the passage of any vehicle (land, air, or water) on the area traversed. All possibilities of disturbing effects on the countryside shall be considered and routes selected to eliminate or minimize such disturbances.

(f) Any cash settlements in lieu of restoration for damages, incurred under ENG Forms 1258 and 2803, will be consummated by supplemental agreement in accordance with subpart I.

PROCUREMENT OF OPTIONS PRIOR TO REAL ESTATE DIRECTIVES (MILITARY)

SOURCE: Sections 644.165 through 644.168 appear at 44 FR 31125, May 30, 1979, unless otherwise noted.

§ 644.165 Purpose and scope.

Sections 644.165 through 644.168 describe the procedures relating to the procurement of options to purchase real estate interests for Army or Air Force military requirements prior to the issuance of a real estate directive. These procedures are applicable to all Division and District Engineers having military real estate responsibility.

§ 644.166 Authority and applicability.

(a) *Authority.* Subsections (a) and (b) of Section 2677 of Title 10, United States Code, as amended by Section 707 of the Act of Congress approved October 27, 1971 (85 Stat. 412), provide that:

(1) The Secretary of a military department may acquire an option on a parcel of real property before or after its acquisition is authorized by law, if he considers it suitable and likely to be needed for a military project of his department.

(2) As consideration for an option so acquired, the Secretary may pay from funds available to his department for real property activities, an amount that is not more than five percent of the appraised fair market value of the property.

(3) For each six-month period ending on June 30 or December 31, during which he acquires options under paragraph (a) of this section, the Secretary of each military department shall report those options to the Committees on Armed Services of the Senate and House of Representatives.

(b) *Applicability.* (1) Where land is needed for proposed construction and the siting of said construction is firm.

(2) When there is a definite indication of material enhancement in value due to change, or proposed change, in use by the land owner, price increase due to publicity given to contemplated Government acquisition, or abnormal increases in market value.

(3) Where there is a definite possibility of private construction which would constitute obstructions in existing or proposed glide angle planes and transitional planes at air bases.

§ 644.167 Implementation.

When a District or Division Engineer determines that any of the conditions described in § 644.166(b) exist in connection with any proposed land acquisition project for military purposes not yet authorized by law, or if authorized, not yet covered by a real estate directive, he will initiate the following actions:

(a) *Planning Report.* A planning report will be developed and submitted in accordance with Subpart A. The report will include the purpose for which the property is "likely to be needed"; the estimated probable increase in value, if applicable; and the justification for negotiating for options under the authority cited in § 644.166. The report will identify any real estate planning reports previously prepared which included the land in question. Any future planning reports relating to the same land will contain appropriate references to this report.

(b) *Property Identification.* Upon receipt of authority to acquire options and determination that funds are available, the District or Division Engineer will obtain and verify ownership data. If it is deemed necessary, title evidence may be obtained in accordance with §§ 644.61 through 644.72.

(c) *Appraisal.* Detailed tract appraisals will be prepared in accordance with Subpart B.

(d) *Procurement of Options.* (1) Negotiations for the option will be in accordance with procedures outlined in §§ 644.83 through 644.85, except that ENG Form 2926, Option to Purchase Real Property, will be used. An attempt should be made to include a provision in the option giving the Government the right to acquire all or part of the land covered by the option where the land held in a single ownership can be separated into definable parcels and the possibility exists that, as planning is developed, the entire tract will not be required.

(2) The following instructions for the use of ENG Form 2926 will be followed:

(i) Insert amount to be paid for the option privilege. This amount cannot exceed five percent of the appraised value.

(ii) If the land has been separated into definable parcels in accordance with paragraph (d)(1) of this section, the option should describe each parcel and provide for a separate purchase price inclusive of any severance damage, as well as an agreed purchase price for the entire tract. The amount to be paid for the option privilege will be apportioned among the separate parcels.

(iii) The expiration date of the option on unauthorized projects should be far enough in advance to permit the insertion of a land acquisition line item in the next available budget; enactment of legislation; apportionment of funds by the Office of Management and Budget; clearance within the Department of Defense; clearance with the Committees on Armed Services of the Senate and House of Representatives, if required; issuance of a real estate directive; and allotment of funds.

(iv) Since options obtained under this section will normally be recorded, ENG Form 2926 will be acknowledged in the form used in the jurisdiction in which the real property is located.

(e) *Report.* When all options within the approval area have been acquired, and prior to their being exercised by the Government, a report will be made to HQDA (DAEN-REA-L) WASH DC 20314 including, but not limited to, the following items:

(1) Project identification.

(2) Directive authorizing acquisition of options.

(3) Number of tracts optioned.

(4) Expiration date of options.

(5) Total acreage optioned.

(6) Total amount to be paid if options are excercised.

(7) Total amount paid for option privilege.

(8) One copy of each option.

(9) One copy of each appraisal.

§ 644.168 Exercise of options.

Upon issuance of a real estate directive for acquisition of the optioned real property, the District or Division Engineer will exercise the option and proceed with the acquisition in accordance with the procedures outlined in §§ 644.61 through 644.88.

Subpart D—Relocation Assistance Program

§ 644.175 Cross Reference.

See Part 641 of this chapter for the regulations on the relocation assistance program.

[44 FR 3212, Jan. 15, 1979. Redesignated at 44 FR 35219, June 19, 1979]

Subpart E—Homeowners Assistance Program

AUTHORITY: 42 U.S.C. 3374.

GENERAL

§ 644.181 Purpose.

Subpart E sets forth the rules and procedures to be followed for the administration of the Department of Defense Homeowners Assistance Program (HAP). The Homeowners Assistance Program is a special relief program designed to provide benefits to eligible homeowners to help offset real estate losses suffered as a result of certain base closure or reduction actions. It is not a procurement program and although it does provide for acquisition of dwellings under certain circumstances, there is no governmental need for such dwellings and they are acquired only for the accommodation of the applicant and must be resold by the Government. It is not a claims program in an adversary sense and there is no provision for judicial review. Therefore, in order to carry out the intent of the Congress in administering the program, it is essential that every effort be made to insure that each applicant is treated fairly and receives the maximum benefits to which he is entitled under the law as rapidly as practicable but with a minimum expenditure of time and money for administration. Reasonable doubts should be resolved in favor of the applicant.

§ 644.182 Applicability.

These procedures are applicable to the Office, Chief of Engineers (OCE), and to those U.S. Army Corps of Engineers' Division and District Engineers (Division/District) having military real estate responsibilities. This program has worldwide application; however, no properties in foreign countries may be acquired except certain property located on a base or installation. The program is applicable to members of all branches of the military services and to all Federal civilian employees of all branches of the Government of the United States except temporary employees serving under a time limitation. Nonappropriated fund employees and independent contractors and their employees are not eligible.

§ 644.183 Objective.

Section 1013 of the Demonstration Cities and Metropolitan Development Act of 1966, Pub. L. 89-754 (80 Stat. 1255, 1290), approved November 3, 1966, as amended, hereinafter referred to as the Act, authorizes the Secretary of Defense (S/D) to provide assistance to eligible military or civilian employee homeowners by payment of partial compensation for losses sustained in the private sale of a dwelling, by payment of the costs of judicial foreclosure, or by purchase of a dwelling by the Government. Such assistance is available to certain military personnel and civilian employees who are the owners and occupants of one- or two-family dwellings located at or near military installations ordered to be closed in whole or in part subsequent to November 1, 1964, including reductions in the scope of operations at such installations occurring after October 28, 1969: *Provided,* That the S/D finds that their service or employment at such installations has been or will be terminated as the result of the closure or reduction action, and that as a result of the actual or pending closure or reduction action there is no present market for the sale of such dwellings upon reasonable terms and conditions. Public Law 91-511 (84 Stat. 1204, 1225), amended the Act, effective as of October 28, 1969, to provide that consideration may be given to the cumulative effect on the local real estate market of all closure or reduction actions in the same area. Pub. L. 92-545 (86 Stat. 1135, 1150), further amended the Act, effective as of November 30, 1970, to authorize assistance to personnel at overseas bases who previously were not eligible because they were not assigned to a unit involved in the closure or reduction action and/or because they owned on-base housing. Pub. L. 93-166 (87 Stat. 661, 697), approved November 29, 1973, further amended the Act, as to closures announced after April 1, 1973, to authorize assistance to certain military and civilian personnel who were previously not eligible because they were involved in routine transfers not connected with the closure action.

§ 644.184 Responsibilities.

(a) The Director of Real Estate, OCE, acting for and on behalf of the Chief of Engineers, has been delegated authority and responsibility for the administration of this program. There has been established within the Directorate of Real Estate the Realty Services Division which constitutes a central office of control responsible for supervision, inter-agency coordination, development of policies and procedures, Congressional liaison, and processing of appeals.

(b) Division/District having military real estate responsibility and the Chiefs of their Real Estate Divisions are hereby redelegated authority to administer, manage, and execute the Homeowners Assistance Program on behalf of all claimants in accordance with the provisions of this regulation. It is contemplated that the Division/District will dispose of all cases except appeal cases on which agreement cannot be reached with the applicant and such appeal cases must be forwarded to OCE for consideration, and, if necessary, forwarded by OCE to the Office of the Assistant Secretary of the Army (Installations, Logistics and Financial Management) (OASA (IL&FM)) for final decision.

(c) Division/District records will account for each application filed by showing that it was withdrawn; that it was settled with benefits; that it was rejected or settled without benefits, but with no appeal, or that an appeal was forwarded to OCE.

[44 FR 3168, Jan. 15, 1979, as amended by 45 FR 71266, Oct. 27, 1980]

§ 644.185 Limitation.

(a) Applications for benefits under the provisions of the Act should be presented to the appropriate Division/District within three years after the public announcement or order of closure or reduction. Any application filed after this time should be submitted to HQDA (DAEN-REH-O), WASH DC 20314, with the reasons for late filing. Following such submission, a determination will be made as to whether the application can be accepted.

(b) In requesting additional information, or in sending official notifications to applicants, the use of certified mail (return receipt requested) is recommended in order that the Division/District may have a record in the form of a certified mail receipt of delivery to the applicant's latest known address.

(c) Where an applicant has failed to respond in 60 days to requests for additional information, Division/District may advise him in writing that his application is considered to be withdrawn, and of the specific time limitation within which a claim must be filed.

(d) Where it has been decided that an applicant is ineligible for benefits or where it has been decided that an applicant in the case of a private sale is eligible under the program but is not entitled to benefits and no appeal has been filed within 180 days from the date written notice of such decision was delivered to the latest known address of such applicant, the case will be considered to be closed.

(e) Where there is an eligible applicant who still owns his home and the Division/District has made a determination of the fair market value as of a date prior to the public announcement (hereinafter referred to as prior value) and has advised the applicant of the amount of the Government's offer to purchase, the applicant will be advised in the letter containing such offer that he has 30 days in which

(1) To accept the offer in writing; or

(2) To appeal in writing; or

(3) To withdraw the application.

If there is no action by the applicant within the 30-day period, the case will be considered withdrawn. If the applicant timely objects to the amount offered, or otherwise appeals, the matter will be processed in accordance with the appeal procedures. Where more favorable action can be taken on appeal, at any level of review, the applicant will be advised that he will have 30 days in which to accept the new offer or to file a new appeal which will be processed under appeal procedures.

(f) Notwithstanding the actions taken in paragraph (e) of this section, in the event an eligible applicant sells his home privately and the time limitations in paragraph (a) of this section, have not expired, his application may be processed on a private sale basis.

(g) Where an appeal has been filed, the case will be considered closed after appropriate action has been taken in conformance with the final decision made on appeal, as prescribed in the appeal procedures.

(h) Settlements made in accordance with the Act and these regulations will not be reviewed for the purpose of applying one of the other formulas for benefits without the prior specific approval of OCE. Closed cases will not be reopened without specific approval of OCE.

§ 644.186 Funding.

(a) The following revolving fund account has been established:

(1) 97X4090—Homeowners Assistance Fund, Defense.

(2) 97X4090.0122—Allocation to Army.

(b) The Department of Defense (DOD) will make available to the Department of the Army (DA) for allocation to OCE, under established procedures, funds required for administration of the program. Funds provided will be utilized for purchase or reimbursement as provided herein, as well as to defray expenses arising in connection with the acquisition, management, and disposal of such properties, including payment of principal, interest, and expenses of mortgages or other indebtedness thereon, and including the cost of staff services and contract services, cost of insurance, and other indemnities.

§ 644.187 Service and employment data.

(a) The Secretaries of the Military Departments and the Directors of Defense Agencies are responsible for disseminating information on the program, rendering assistance to applicants, receiving and verifying statements on employment in applications, and for forwarding such applications to the appropriate Division/District for processing. At installation level, the personnel officers of other Federal agencies having custody of applicant's personnel records will verify statements on employment.

(b) Fact Sheet and Application for Homeowners Assistance, DD Form 1607, have been distributed to Department of Defense installations and activities. The Fact Sheet explains the objective of the programs, the eligibility requirements, the benefits available and the procedures to be followed in seeking assistance. the application provides a format for submission of essential factual data and the type of benefits requested.

§ 644.188 Overseas bases.

(a) Prior to the enactment of section 601 of Pub. L. 92-545 on October 25, 1972, servicemen and civilian employees in foreign countries were covered by the program and were subject to all of the eligibility requirements of the Act, as were applicants in the United States, the only difference being that the Act precluded the acquisition of properties in foreign countries. The enactment of section 601 of Pub. L. 92-545 kept intact existing benefits for servicemen and civilian employees in foreign countries and provided benefits to certain personnel not previously covered. Such personnel at overseas bases who sell their on-base or off-base homes at a loss, or who are unable to sell their on-base property as a result of the announced closure or reduction in scope of operations of such bases, are entitled to assistance, under the formula set forth below. In order to qualify for assistance, such personnel must relocate incident to transfer, reassignment, or involuntary termination of their employment at a time when the closure or reduction in scope of operations of the base where they were stationed or employed results in their inability to sell their property upon reasonable terms and conditions.

(b) No properties may be acquired in foreign countries except in connection with compensation for property located on an overseas base or installation. Eligible owners of such property who are unable to find a purchaser for the property may surrender their interest therein to the United States and shall be entitled to compensation in an amount equal to (1) 90 percent of the sum of the purchase price of the dwelling and improvements, and all costs of ownership, including interest on notes, utilities, and service, maintenance and insurance, less (2) the total of all housing allowances received from the Government during ownership or occupancy of the dwelling, and all rents or other benefits collected: *Provided, however,* That the maximum compensation will in no event exceed 90 percent of the unamortized portion of the cost of the property, including improvements, at the time ownership was terminated, as reflected in the amortization schedule, if any, relating to such property. In the case of private sale of property located on base, the foregoing formula will also be applied, except that in computing benefits due the applicant the sale price will be deducted together with the other items specified in paragraph (b)(1) of this section.

(c) Benefits available in connection with off-base property are limited to private sale relief, consisting of the difference between 95 percent of the fair market value of such property before the closure or reduction announcement and the fair market value thereof at the time of sale or the sale price, whichever is greater. No overseas off-base property may be acquired by the Government.

§ 644.189 Records and reports.

Homeowners Assistance Docket Sheet, ENG Form 4153, will be used by Division/District to record actions taken after receipt of applications. The foregoing forms will be used as a document for the preparation of punched cards for reporting purposes. Detailed instructions are set forth in Chapter 14, EP 405-1-2. Reporting requirements for RCS DAEN-RE-12 are incorporated in ER 405-1-11.

PROCEDURE

§ 644.190 Announcement of base closure or reduction.

(a) Immediately upon announcement at DOD level or locally of a closure or reduction action, Division/District will take the following actions in anticipation of the filing of applications for homeowners assistance:

(1) Contact the respective base personnel offices within their jurisdictions to apprise those offices of the availability of HAP benefits and to establish the proper degree of liaison;

(2) Obtain from the base personnel offices an indication of the number of homeowners involved and the specific locations of their homes;

(3) Prepare estimates indicating the number of applications for homeowners assistance that may be expected, as well as estimates of the number of homeowners that may be expected to be eligible under the program. Eligibility estimates may be based on the general marketability of homes in the area, the concentration of homes in specific areas, the time phasing for personnel movement and other available information. A detailed study of market conditions is not necessary at this time. Based on information obtained in paragraphs (a) (1) and (2) of this section, determination may be made concerning the extent of publicity that should be given to the homeowners assistance benefits. For example, if it appears the closure or reduction action will not result in economic losses in the sale of homes, it would be inappropriate to emphasize to the homeowners the availability of benefits.

(b) Upon completion of the preliminary investigation and study of potential impact, with respect to a new closure or reduction action announcement, APP C, ER 405-1-11 prescribes that an Installation Closure Potential Impact Report (RCS DAEN-RE-21) will be prepared and forwarded. The report contains the following information and is furnished to HQDA (DAEN-REH-O) WASH DC 20314, within 60 days from the date of public announcement:

(1) Estimated number of military and civilian personnel affected, segregated by rank or grade level.

(2) Estimated number of homeowners in each category.

(3) Estimated number of personnel involved in routine transfers affected by closure or realignment action.

(4) Real estate market conditions.

(c) With respect to a new closure or reduction action announcement, action will be taken immediately to obtain and assemble current market data with respect to the activity of the real estate market prior to the closure or reduction action announcement in the general area of the affected bases. The scope of such action will be commensurate with the anticipated work load as determined by the Division/District. Such data should be filed for future reference. It will be useful in the processing of applications at a later date when it will be necessary to compare the pre-base closure market with the market at the time of the applicant's sale, relocation or foreclosure. This should not be construed as a request for a detailed market data impact study nor is it recommended that individual appraisals be made at this time. A substantial collection of current sales data should provide sufficient data upon which the preclosure market may be estimated. An excellent source of sales data is the local Board of Realtor's Multiple Listing by cards or sheets. These cards or sheets include a photograph of the house, a brief physical description and the asking price. It is essential that the selling price be obtained and set forth on the card. If a multiple service is not available, similar data sheets on sales should be compiled. Other sources of data are local realtors, mortgage brokers, assessment officers, county courthouse records and utility companies. A determination at the time of the announcement as to whether or not applicants can sell upon reasonable terms and conditions would be premature; however, if there are early closure reduction and phaseout dates, it is highly probable that such determination will be necessary at an early date. When such a determination is required, it is proposed that it be made from a simple market analysis, plus a sampling of appraisals covering the initial applications received which should indicate the trend of the market. An elaborate and costly impact study is not required and should not be made.

§ 644.191 Review of application.

(a) In order to be eligible for HAP benefits, an applicant must meet all pertinent requirements of the Act. Sections 644.193 through 644.203 refer to most of the basic requirements of section 1013 (a) and (b) of the Act. In view of the inter-relationship between the paragraphs, they should be read together for proper understanding. Insofar as practicable, subjects are treated in the chronological order contained in the Act so that the processing of an application may be discontinued without unnecessary work if an applicant fails at any point to meet one of the basic requirements of the Act.

(b) Division/District, upon receipt of an application will assign a number to it; however, applications in connection with installations located in another Division/District will not be assigned a number but will be forwarded immediately to the Division/District having jurisdiction (a number, once assigned, will not be reassigned regardless of the disposition of the application).

§ 644.192 Closure or reduction action determination.

A closure or reduction action, as contemplated by the Act, is defined as a publicly announced action by the Department of Defense or by a component thereof, at headquarters or local level, which, (a) involves a complete or partial closure of a military base or installation, or (b) involves a reduction in the scope of operations at a military base or installation. In addition, where any publicly reported governmental statement or action can reasonably be interpreted by base personnel and the public as indicating that a closure or reduction action is imminent, such statement or action will be regarded as a closure or reduction announcement within the meaning of the Act. Any reasonable doubt as to whether a closure or reduction action has been announced will be resolved in favor of the applicant.

§ 644.193 Base closure action "in whole."

A base closure "in whole" is defined as an action announced publicly by the Department of Defense or by a component thereof, which involves one of the following:

(a) The complete closing of a military base or installation, or

(b) The termination of all existing functions (other than caretaker) at a military base or installation.

§ 644.194 Base closure action "in part."

A base closure "in part" is defined as an action announced publicly by the Department of Defense or by a component thereof, which involves one of the following:

(a) The termination of a separate and distinct mission or function at a military base or installation, or

(b) The permanent relocation of a military unit from an installation, other than from an installation which includes in its basic mission the support or "homeporting" of various military units, and historically has experienced repeated and sharp fluctuations in aggregate personnel strength.

(c) In addition to the above, there must be one of the following:

(1) The permanent or indefinite closing of all or part of the physical plant at a military base or installation, or

(2) A change in use from one Defense component to another of all or part of the physcial plant at a military base or installation, coupled with a significant drop in personnel for a period of six months or more, or

(3) A change in use from one mission or function to another, of all or part of the physical plant at a military base or installation, coupled with a significant drop in personnel for a period of

six months or more. A significant drop in personnel is considered as occurring where the aggregate of Federal personnel (military and civilian) displayed in consequence of the announced closure was a significant part (one percent or more) of the total area employment at the time of the announcement.

§ 644.195 Reduction in the scope of operations.

A reduction in the scope of operations is defined as an action publicly announced by the Department of Defense or by a component thereof which involves the elimination of military or Federal civilian personnel from a military base or installation and yet does not necessarily involve, as in the case of a closure action, the termination of any mission or function, the permanent relocation of any military unit, or the permanent closing of all or part of the physical plant.

§ 644.196 Eligibility—service or employment certification.

Upon a determination that the applicant was involved in a base closure or reduction action, the Division/District will ascertain that the personnel officer has properly certified the application as to service or employment. If the application is incomplete, timely action will be taken to return it to the personnel officer for proper completion, prior to the further processing thereof. If the certification is satisfactory, the application will be checked for compliance with the other requirements of the Act.

§ 644.197 Any property improved with a one- or two-family dwelling.

(a) The applicant must be or have been the owner of a one- or two-family dwelling situated at or near the military base or bases announced for closure or reduction. A one- or two-family dwelling which is located on a farm or on other large acreage would include only such land as would reasonably constitute a residential property within the area. Land owned by the applicant which does not adjoin his residence normally will not be considered a part of the residential premises. Whether an additional adjoining lot should be included as part of the residential premises will depend on whether it is, in fact, a part of the residential premises and was used as such, and whether it can be severed readily and can be disposed of economically without disproportionately affecting the disposal of the residential premises. The method generally used within the area for selling and purchasing residential premises will be considered. Notwithstanding the foregoing, the applicant should not be left with a lot which is less than the size required for a home, similar to those in the area, or which would be considered unmarketable except as part of the adjoining residence. These are judgment factors to be determined and applied to individual cases by the Division/District.

(b) To qualify for consideration, the property must include a dwelling unit which constitutes an improvement in the usual sense as of the date of the closure or reduction action announcement. It must be, or have been, an integral part of the property. Individual apartments in condominium or cooperate ownership may qualify. Generally, trailers would not qualify; however, trailers would qualify if demounted and permanently attached to owned land or land held under a long-term lease or if they are otherwise determined to be real property. The Act refers to "any property improved with a one- or two-family dwelling"; therefore, property would include land as well as improvements.

(c) Where the Division/District determines that the improvements on the property (in connection with which a qualified applicant has filed an application) have been damaged after the closure or reduction action announcement to the extent of 75 percent or more or have been destroyed by fire, flood, and/or other like casualty, the applicant will be entitled to benefits only on the basis of a private sale. The Government will not purchase the applicant's land. In such event, his benefits will be computed as follows:

(1) Find the prior value of the land and improvements in the undamaged condition.

(2) Find the current value of the land and improvements in the undamaged condition.

(3) Multiply the prior value (i) by 95 percent and deduct (ii); this will be the amount of benefits to be paid to the applicant.

(d) Where the Division/District determines that the improvements have been damaged after the closure or reduction action announcement to the extent of 25 percent or less by fire, flood, and/or other like casualty, the applicant shall be notified that he may elect to receive benefits on the basis of a private sale, as computed above, or he may sell the property to the Government on the following basis: Multiply the prior value (paragraph (c)(1) of this section) by 90 percent and deduct therefrom the amount or percent of damage calculated on the current value in the undamaged condition.

(e) Where the Divison/District determines that the improvements have been damaged after the closure or reduction action announcement by fire, flood, and/or other like casualty more than 25 percent but less than 75 percent the applicant shall be notified that he may receive benefits on the basis of a private sale, as computed above, that the purchase of his property by the Government will require the approval of OCE. If the applicant desires to sell his property to the Government, the Division/District will make appropriate recommendations and include information from the Regional Office of the Federal Housing Administration (FHA) as to whether the property would be acceptable for sale. If the FHA will not accept the property, Division/District should include a disposal plan.

§ 644.198 Location of property "at or near" the installation.

A property within 20 miles of an installation will be considered to be "at or near" that installation. Properties at a greater distance will be considered to be "at or near": *Provided,* That the applicant actually lived in the property and commuted daily to his place of work during the period immediately prior to his transfer, *or* during the period immediately prior to his being ordered into on-post housing.

§ 644.199 Termination as result of closure or reduction action.

The applicant must meet one of the eligibility requirements set forth below:

(a) Must be a non-temporary Federal employee whose employment at or in connection with the base, has been or will be terminated as a result of the closure or reduction action.

(b) Must be a serviceman whose service at or in connection with the base has been or will be, terminated as a result of the closure or reduction action.

(c) An applicant's employment or service at the base or installation which has been ordered to be closed or reduced must be or have been terminated as a consequence of the closure or reduction action. An applicant may be considered as having his employment or service terminated as a consequence of the closure or reduction action if he is eligible under the other requirements of the Act and if:

(1) Subsequent to public announcement of the closure action, or within six months prior thereto:

(i) He elects to retire.

(ii) He elects not to re-enlist in the military service.

(iii) He voluntarily resigns from a position which will be abolished.

(iv) He is transferred and his position or assignment is scheduled for eventual termination as a result of the closure or reduction action.

(v) He elects to accept other employment in lieu of transfer at a location beyond normal commuting distance; or

(2) He is transferred overseas unaccompanied by dependents within 15 months prior to public announcement of the closure or reduction action.

(d) In addition to the above, servicemen and Federal employees assigned or employed at or near bases announced for closure after April 1, 1973, who are required to relocate due to transfer, reassignment, or involuntary termination of employment for reasons other than the closure action, are entitled to program benefits, subject to their meeting other prescribed eligibility requirements.

§ 644.200 Time of employment or service at base.

Applicant must meet *one* of the qualifications set forth in paragraphs (a), (b), or (c) of this section:

(a) Must be or have been a serviceman or Federal employee assigned to or employed at or near the installation or activity at the time of the public announcement of the closure or reduction action; or

(b) Must be or have been a serviceman or Federal employee who transferred from such installation or activity, or who was terminated as an employee as a result of reduction-in-force within six months prior to public announcement of the closure or reduction action; or

(c) Must be or have been a serviceman or Federal employee transferred from the base on an unaccompanied overseas tour within 15 months prior to the public announcement of the closure or reduction action.

§ 644.201 Owner-Occupant.

The applicant must meet one of the requirements set forth in paragraph (a) or (b) of this section:

(a) Must be or have been a serviceman or Federal employee who was the owner-occupant of the dwelling at the time of the public announcement of the closure or reduction action; or at the time of transfer or termination as a result of a reduction-in-force within six months prior to the said public announcement; or at the time of transfer from the installation on an overseas tour unaccompanied by dependents within 15 months prior to the said public announcement.

(b) Must be or have been a serviceman or Federal employee who vacated the owned dwelling as a result of having been ordered into on-post housing during a six-month period prior to the closure or reduction action announcement.

(c) A serviceman or Federal employee may be considered an owner of property without regard to the technical form or description by which an ownership interest is evidenced: *Provided*, That, consistent with local practices and procedures, the applicant can be shown substantially to have the rights and duties of a person with an ownership interest in the property. Depending on relevant circumstances, for example, an applicant may be eligible who holds title to a long-term ground lease rather than to the fee or who is the buyer under a long-term executory purchase contract; but one whose interest is that of a mere security holder, whether by mortgage, deed of trust, or otherwise, shall not be eligible. An applicant may be eligible notwithstanding that title or other ownership interest is in the joint or exclusive name of a spouse. A serviceman or Federal employee who was the owner of a dwelling may be considered to have been the occupant although he was temporarily absent therefrom if his temporary absence was for a valid governmental purpose, such as temporary duty, and he would have returned to the house except for the closure or reduction action.

§ 644.202 Relocation or financial hardship.

Applicant must meet *one* of the requirements set forth in paragraph (a) or (b) of this section:

(a) Must be or have been a serviceman or Federal employee who, as a consequence of the closure or reduction action, was required to relocate because of a military transfer or because of the acceptance of employment beyond a normal commuting distance from the base. For purposes of satisfying this requirement, the applicant must be relocated to a new place of service or employment which is more than 20 miles from the dwelling to which assistance is sought *and* further from the dwelling in terms of commuting time than the base or installation announced for closure or reduction. Applicants listed in § 644.199(c)(1) who resigned, retired or chose not to reenlist and who moved beyond a reasonable commuting distance from the base, are ipso facto considered to have accepted employment beyond a normal commuting distance from the dwelling for which compensation is sought, as required by

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section 1013(b), second proviso, Pub. L. 89-754.

(b) Must be a serviceman or Federal employee who, as a consequence of the closure or reduction action, is unemployed, not as a matter of personal choice, and who is able to demonstrate such financial hardship that he is unable to meet the mortgage payments and related expenses. Financial hardship due to being unemployed in the area of the closed installation is a determination that must be made by the Division/District where the applicant is unemployed not as a matter of personal choice and as a result of base closure. The applicant may be considered so unemployed even though offered, prior to termination, a comparable position at another location beyond normal commuting distance. In support of the hardship allegation, the applicant is required to state why employment is not available or has not been accepted, the amount and frequency of all income, nature and amounts of debts, and number and amount of all installment payments, including mortgage payments in arrears. Where current income for a period of 90 days next preceding the date of application is less than the current enforceable obligations against the applicant, including the mortgage payments, it may be determined that unemployment and financial hardship, as required by the Act, has been established. It is pointed out that this determination is to be based upon the relationship between income and obligations. The financial worth of the applicant need not be taken into account. In making the hardship determination, doubtful cases should be resolved in favor of the applicant.

(c) Each applicant requested to furnish supporting information to establish financial hardship will be furnished an appropriate notification of the provisions of the Privacy Act of 1974 (5 U.S.C. 552a).

§ 644.203 Qualifying.

(a) In the event an applicant fails to meet any of the essential requirements of the program as set forth in the preceding paragraphs, there will be no further action taken on the application except to notify the applicant in writing of this fact and to advise him of his right to appeal.

(b) Where the applicant meets the essential requirements of the preceding paragraphs, action with respect to the application will be taken as hereinafter set forth.

§ 644.204 Housing market area.

The housing market area is defined as an area in which dwelling units are in competition based on available transportation facilities, local commuting habits and preferences, and the pattern of urban development, taking into account the location of the homes of the employees affected by the closure or reduction action.

§ 644.205 Market impact zone.

The market impact zone is defined as a residential district or subdivision within the market area or a category of homes by prices which is sufficiently impacted by a base closure action to enable homeowners to qualify for assistance. Such a zone could be the area contained within a circle surrounding the base, the radius of which is the distance between the base and the applicant's property. It is recognized that in many cases only a portion of a market area, or homes in a certain price bracket will be significantly affected by a base closure action.

§ 644.206 Determination of economic impact.

(a) A basic requirement of the Act is that there be no present market for the sale of the applicant's property upon reasonable terms and conditions, as a result of the actual or pending closing of the base or installation in whole or in part, or as a result of the reduction in the scope of operations at such base or as the result of such action and other similar actions in the same housing market area or market impact zone. It is basic to this provision of the Act that there be a causal relationship between the lack of a market for the sale of a home upon reasonable terms and conditions, and the actual or pending closure or reduction action(s). Where the Division/District determines that the lack of a market for the sale of a home upon reasonable terms and conditions is the result of the actual or pending closure or reduction action(s), there is no need to make further determinations such as the relationship between the number of Federal personnel spaces displaced and the total area employement. Where, however, the Divsion/District is unable to establish a clear causal realtionship between a closure or reduction action(s) and a decline in value, it will be determined that the decline in market values is the result of the actual or pending closing of the base or installation where the decline took place susequent to the closure or reduction action(s), and where the aggregate of Federal personnel spaces (military and civilian) displaced in consequence of the announced closure or reduction action(s) was a significant part (one percent or more) of the total area employment at the time of the announcement. Division/District will consider total declines in market values without attempting to ascertain what portion of such declines are attributable to factors other than closure or reduction action(s). The area involved in the term "total area employment" should be determined by the Division/District. As a general guideline, the total employment area might be considered to be an area bounded by points representing the average distance traveled by the majority of employees commuting to work at the base.

(b) Requirements of Section 1013(a)(3) of the Act will be met if the causal relationship has been established as provided in paragraph (a) of this section, and if:

(1) Subsequent to the closure or reduction action announcement there is a decline in market values of five percent or more within the market area, or within the included market impact zone as to properties within that zone, based on findings of a Federal agency, a special market survey, or a pattern of area appraisals. Individual real property appraisals will suffice pending establishment of an area pattern or other valid evidence.

(2) As to any particular property, the applicant is unable to dispose of his property to a responsible purchaser for the amount of the outstanding mortgages, after reasonable efforts to do so. In such case, the applicant must show evidence of efforts to sell privately. Such evidence may include such things as newspaper advertisements and listing with brokers. Where, however, a property is mortgaged immediately prior to the announcement in a sum in excess of prior fair market value, failure to dispose of the property for the aggregate of the mortgage debt will not provide a basis for determining that there is no market upon reasonable terms and conditions as to that property.

(c) In addition to paragraph (b) of this section, if a causal relationship to the base closure can be shown, there will be considered to be compliance with the requirement of section 1013(a)(3) of the Act, if:

(1) As to a particular property, the applicant is unable to sell his property after reasonable efforts to do so and the said property is foreclosed; or

(2) As to a particular property, the applicant, after reasonable effort has not been able to sell his home and is willing to convey his property to the Government for 90 percent of its prior value; or

(3) There is a determination by OCE that because of the peculiar circumstances of the case there is considered to be lack of market for the sale of the applicants' homes as a result of the closure or reduction action(s). An example of such a case would be where a group of homes larger than the local market can absorb in a reasonable length of time has been placed on the market, resulting in a stagnant market, thereby distorting the normal appraisal techniques of estimating value through comparable sales and leaving the homeowner with little choice other than to retain his home or to sell to a speculator. Where such a situation is encountered, Division/District Engineers should take prompt action to report the matter to OCE with applicable comments and recommendations.

(d) In the event the Division/District, after analyzing all market data and the appraisals covering the initial applications received, determines that the requirements of section 1013(a)(3) of the Act have not been met and plans to deny all applications on the basis of no impact in a housing market area, the Division/District Engineer will submit his findings and recommendations to OCE for review prior to taking any action thereon.

§ 644.207 DD Form 1607, application for homeowners assistance.

Inasmuch as DD Form 1607 does not provide all of the information required to process the application, Figures 7-1, 2, and 3 in EP 405-1-2 are proposed letters to applicants requesting supplemental information. The letters may be considered to be guidelines and may be amended as deemed appropriate. Figure 7-4 (EP 405-1-2) is a Privacy Act Information Statement which should be furnished to the applicant on all occasions when information is requested from such applicant.

§ 644.208 Applications filed requesting government purchase before impact is known.

(a) Closure or reduction action announcements often contain items with imminent action dates. Many applicants will be faced with a shortage of time between notice of termination of their service or employment and their relocation. A problem may arise with respect to HAP applications wherein the Government is requested to buy the applicant's home soon after a closure or reduction action is announced and, at the time of the filing of the application, there is no evidence of adverse real estate market impact as a result of the closure or reduction action. In such a case, the application cannot be approved until it can be ascertained that as a result of the closure or reduction action there is "no market for the sale of the applicant's dwelling upon reasonable terms and conditions." Potential applicants should be advised that in the early stages of a closure or reduction action, the impact on the housing market may be very slow in appearing. Indicators, such as sales prices, increased inventory and decrease in sales, may be inconclusive for some time as to whether there is a depressed or stagnant market. The applicant's experience in trying to sell his property may be the best early indication of the lack of a market. Until there is evidence of an adverse impact, or a stagnant real estate market, the applicant must be advised that the Government cannot acquire his dwelling.

(b) An applicant who decides to appeal within 180 days after he is notified that his application has been denied because of no impact, faces the possibility that the market may not change within the time required for consideration of his appeal and that his appeal will, therefore, have to be denied. In view of the fact that there may be an impacted real estate market at a later date as a result of the closure or reduction action, the applicant should be given the opportunity to appeal or to withdraw his application without prejudice to his right to resubmit it at a later date. If the applicant does not respond within the 180-day period or if the applicant should appeal and be denied, Division/District Engineers may make recommendations to OCE on an individual case basis for reopening such cases in the event there is a later adverse impact on the market which might result in favorable action in the applicant's case.

§ 644.209 Real estate appraisals.

(a) In cases where the applicants satisfy all other eligibility requirements, individual real property appraisals will be prepared by staff or contract appraisers as guides to the determinations of fair market values. Care should be exercised to avoid the expense of appraisals which are elaborate or more detailed than is necessary to provide the limited data necessary for this program. It is to be noted that in this program no property will be acquired through condemnation proceedings. Existing FHA, VA, and other valid appraisals should be used in lieu of ordering new appraisals where such existing appraisals were prepared within an acceptable time frame. As an exception to Subpart B, the brief appraisal format set forth as Figure 7-6, or a reasonable variation thereof, will be used in this program. Substantial savings can be realized in the use of a short form appraisal format. Where there is an appeal as to value, a full appraisal will be made unless the matter can be resolved at the Division/District level. Substantial differences between the "before" appraisal and the applicant's purchase price should be fully explained, as well as substantial differences between the "after" appraisal and the applicant's selling price, if an amount other than the selling price is used to determine benefits. To the extent possible, staff appraisals should be obtained.

(b) Division/District offices should not offer to furnish the applicant with a copy of the appraisal report but the applicant will be notified of the determined valuations of his properties so that he may be fully informed in the event he desires to appeal such valuations. If the applicant requests a copy of the appraisal report, it will be furnished to him.

(c) Except as set forth in this Subpart E, HAP appraisal matters will be handled as set forth in Subpart B.

§ 644.210 Determination of fair market value (FMV).

The Act requires that determinations be made of the fair market value (FMV) of applicants' homes as of a date prior to the announcement and in many cases at the time of sale. The Division/District will make determinations of FMV using the real estate appraisal report, FHA and VA loan commitment documents and any pertinent information contained in the record which relates to the value of the applicant's property.

(a) The FMV prior to the public announcement will be determined as of a date immediately prior to the announcement, or as close to the announcement as such value can reasonably be determined. However, if it is established that the imminent closure of the base was known to the public prior to the official announcement, the applicant should not be penalized for the resultant downward trend of real property values between the time of the actual public knowledge of the closing and the time of the official announcement.

(b) If the applicant has made a reasonable effort to sell his property within the time frame allotted to him by the circumstances of his transfer and relocation and there are no cogent reasons to believe that the transaction misrepresents the fair market value of the applicant's property at the time of the transaction, then the sales price should be used as the "after" value. The applicant should be given the advantage of any reasonable doubt. Although the sales price normally will be used as the "after" value, it must be recognized that some applicants may make poor bargains and sell their homes at prices substantially below the current market value for comparable properties. Since it is not intended under this program to provide compensation for losses occasioned by failure to obtain the current market price, such an applicant's benefit may have to be determined on an "after" value greater than his sale price. When this is done, the record should contain cogent reasons in support of the "after" value.

(c) As an aid in the administration of this program, the Division/District is authorized to use as the "prior" FMV an amount not to exceed 110 percent of the estimated prior FMV shown in the appraisal report, when he determines that the circumstances in the individual case justify such action. The specific reasons supporting such action will be made a part of the record and the responsible official will include a statement in the record that the prior FMV was determined in accordance with the Act and delegations of authority. This authority may be exercised either in the initial processing of the application or when the matter is reviewed on appeal. It is intended that an eligible applicant will be afforded initially that amount of benefits to which he is entitled and that this authority will not be used as a bargaining tool in order to settle the applicant's appeal.

§ 644.211 Reasonable effort to sell.

The term "reasonable effort to sell," or similar phrases throughout this chapter, must be related to the time the applicant has available to him (by direction of his employer or by personal choice) to sell his property. If he makes plans to relocate promptly, he should not be encumbered by a requirement to hold property on the market beyond a desirable time considering his relocation plans. This should not be considered to be encouragement for a private sale below the apparent market value, but should be considered an accommodation to the applicant to facilitate his move by sale to the Government at 90 percent of prior value.

BENEFITS—PRIVATE SALE AND FORECLOSURE

§ 644.212 Benefits—Private sale.

(a) An eligible applicant may be reimbursed in connection with the private sale of his home in an amount not in excess of 95 percent of the prior FMV, less the FMV of the property at the time of sale, or the sales price, whichever is greater. Care must be exercised to assure that no commitment is made to an applicant as to the granting of assistance in the absence of a finding of market impact. The applicant must show that he has made a reasonable effort to obtain the maximum price for the property. Applicants should be encouraged to obtain a release from the VA or the FHA of their liability in the case of assumption of their loan by their purchaser.

(b) For purposes of determining compensation for losses sustained in a private sale, fair market value at the time of sale as contemplated by section 1013(c) of the Act will be the fair market value at the time of sale, or the sales price, whichever is greater, less the amount of the closing costs, sales expenses, and "mortgage points" customarily paid by the seller in the area in connection with the sale of a one- or two-family home. Allowance of the real estate sale expenses may not duplicate any sale expenses paid or payable under Pub. L. 89-516 (80 Stat. 323, 324) in the case of certain civilian employees who have a permanent change in their duty station.

(c) Section 1013(c) of the Act provides in part that cash payment as compensation for losses sustained in a private sale shall not be made in any case in which the property is encumbered by a mortgage loan guaranteed, insured, or held by a federal agency unless such mortgage loan is paid, assumed by a purchaser satisfactory to such federal agency, or otherwise fully satisfied at, or prior to, the time such cash payment is made. The Veterans Administration has determined that it will consider the present titleholder to be the "purchaser" for the purposes of this program. There have been some difficulties and some delays in obtaining the approval by FHA and VA of the subsequent purchaser. Each application should be completely processed, as provided below, even though settlement may be delayed or precluded because of the failure of the federal agency to certify the subsequent purchaser as satisfactory:

(1) If the applicant is found to be ineligible or it has been determined that no benefits will accrue to him, no contact will be made with FHA or VA as to the acceptability of a subsequent purchaser. The applicant will be notified that he is ineligible or that he is not entitled to benefits. If no appeal is filed, the case will be considered closed. If an appeal is filed, the case will be handled under the appeals procedures.

(2) If the applicant is found to be eligible and agrees to accept the benefits offered, the Division/District will request the FHA or VA to advise whether the subsequent purchaser has been approved. If such approval is not forthcoming, or the FHA or VA declines to approve the subsequent purchaser, the applicant will be advised that payment cannot be made to him until FHA or VA approves the subsequent purchaser. Sufficient funds will be allocated to provide for payment to such applicant at a later date, in the event the subsequent purchaser should be approved by the FHA or VA.

§ 644.213 Benefits—Foreclosure.

(a) Foreclosure actions may be treated as foreclosures or as prior sales. However, where the applicant has sold the property and final settlement has been made on the basis of an actual sale the case may not be reopened in the event of a subsequent foreclosure.

(b) Where the foreclosure costs are to be paid or reimbursed by the Government, the Division/District will verify all facts as necessary with court officials, judgment holders, and claimants before making payment.

§ 644.214 Benefits—Deed in lieu of foreclosure.

Where an applicant has conveyed his home by deed in lieu of foreclosure, the case will be treated as a private sale.

§ 644.215 Benefits—Private sale or foreclosure basis.

(a) Upon determination of the benefits to which an applicant is entitled, based on private sale or payment or reimbursement of foreclosure costs, the applicant will be notified by letter as to such benefits and asked to advise concerning acceptance of the benefits most advantageous to him. He will be informed by the Division/District in specific detail how the benefits were determined, including the estimated valuations, and advised of his right to appeal any decision which he feels is adverse to his interest and the appeal procedure to be followed. Where applicable, an information copy of the letter to the applicant will be furnished to the regional office of the VA or FHA.

(b) Upon receipt of notification of acceptance of benefits by the applicant, necessary documentation will be made and checks will be issued to the appropriate parties as provided in this pamphlet.

(c) If the application is processed as a private sale and payment is made to the applicant, the applicant is thereafter precluded from being eligible for foreclosure benefits. In the event of little or no benefits under the private sale formula, and where no foreclosure has occurred, an eligible applicant will be apprised of the foreclosure benefits available under the law and will be given the opportunity to withdraw his application, without prejudice to his right to resubmit it at a later date within the three-year time period limitation, if he desires to handle the matter in this manner.

BENEFITS—ACQUISITION

§ 644.216 Acquisition by the government.

(a) An eligible applicant who owns his home may elect to sell the property to the Government and to receive, as the purchase price thereof, an amount not to exceed 90 percent of prior FMV or the amount of the outstanding mortgages. Purchase by the Government does not involve a displacement within the meaning of Pub. L. 91-646 (84 Stat. 1894) and Pub. L. 91-646 has no application.

(b) An eligible applicant who still owns his home should be advised of the acquisition procedures and of the estimated time to complete the acquisition. The applicant should also be made aware:

(1) That the election to sell his home to the Government is voluntary, must be made within 30 days after he has been advised as to the "prior" fair market value, subject to a right of appeal with respect to the amount of the prior value, and that the Government will take title only by a direct purchase transaction since condemnation is not authorized.

(2) That if he retains title to the property he will not be eligible for homeowners assistance.

(3) That in the event he sells his home privately he is entitled to receive private sale assistance under the formula set forth in the law.

(4) That the Government will determine benefits and that all possible aid will be given to afford him the full benefits authorized by the Act.

§ 644.217 Assumption of primary mortgage.

When the applicant's home is purchased, the agreement between DOD and the Department of Housing and Urban Development (HUD) contemplates that the primary mortgage will be assumed by the Government and that other mortgages will be paid off as part of the closing of the purchase transaction. The primary mortgage will not be prepaid unless approval is obtained from HUD (FHA) or from HQDA (DAEN-REH-O) WASH DC 20314. It is considered that where the Government has assumed and agreed to pay the mortgage indebtedness, the benefits accorded by the Act are fulfilled, even though the primary mortgage is left outstanding and the applicant may not technically be released from his obligations thereunder.

§ 644.218 Closing and settlement costs—Arrearages.

(a) The applicant is responsible for making mortgage payments up until the date of purchase by the Government and the Government will assume no responsibility if the applicant fails to make such payments and there is a foreclosure. However, in connection with the acquisition the Government will reimburse the applicant on a prorated basis for mortgage interest; penalty charges, if any; and taxes and hazard insurance premiums, due after the date of the applicant's relocation or date of his application, whichever is later. The applicant is reimbursed for the principal portion of mortgage payments by being paid for his equity in the property at time of settlement; caution should be exercised to assure that no duplicate payment is made in this respect. The applicant is, of course, responsible for payment of outstanding judgments, liens, and encumbrances, including levied or pending public improvement assessments. To the extent that the applicant receives a payment, such as rental income, or other benefits from use of the property after filing his application, or the date of his relocation, whichever is later, an appropriate adjustment will be made by the District/Division Engineer. Closing and settlement costs are borne by the Government.

(b) The amount of the outstanding mortgages as contemplated by section 1013(c) will be the total amount which the applicant, as the mortgagor, owes pursuant to the mortgage agreement(s). This will include taxes, hazard insurance, and interest and penalty charges which have accrued and have been added to the total indebtedness, as adjusted to provide for the costs for which the applicant is responsible, as set forth in paragraph (a) of this section.

§ 644.219 Preparation of offer to sell.

If the applicant elects to sell the property to the Government, the applicant and spouse will execute an offer to sell the property reflecting the terms and conditions of the proposed sale. ENG Form 42 appropriately modified or other form may be used for this purpose. It is not necessary to submit the revised form of offer to the Chief of Engineers for consideration prior to acceptance. Provision in the offer for mortgage assumption by the Government should conform to local law. Provision for the prorating of real estate taxes should conform to local custom.

§ 644.220 Preparation of lands representative's report.

A complete written record of contacts with the applicant will be prepared and signed by the lands representative. Part I of ENG Form 3423, Negotiators Report, may be used for this purpose. This record will state the chronological history of the contacts made and all elements considered in evaluating the various elections available. Final action on the applicant's offer will be entered on this record as soon as that information is available.

§ 644.221 Acceptance and distribution of offer to sell.

(a) For each purchase transaction the original and four copies will be signed by the applicant and spouse, if any. A copy will be left with the applicant when the offer is obtained.

(b) Division and District Engineers, and the Chiefs of their Real Estate Divisions are authorized to accept offers to sell incident to the acquisition of land under the Homeowners Assistance Program.

(c) When the offer is approved, funds determined to be available and the instrument accepted, the offer will be appropriately numbered and distributed immediately as follows:

(1) Original signed offer to project file.

(2) One signed copy to the applicant.

(3) Signed copy to title assembly.

(4) Signed copy to F&A Officer.

§ 644.222 Occupation of property.

(a) Under agreement with DOD, FHA will assume custody of the properties for management and disposal immediately upon vesting of title. Arrangement should be made with the applicant and the tenant if the property is rented, for the transfer of possession of the property to the Government. Ordinarily, possession should be given at the time title is vested in the United States. An agreed possession date should be incorporated in the offer. The applicant should arrange with his tenant to vacate the property by the time agreed upon. FHA desires that the property be vacant at the time it receives custody.

(b) If circumstances require, applicants and their tenants may be permitted to remain in possession after title is transferred to the United States: *Provided, however,* prior approval is obtained from the local FHA insuring agency which will assume custody of the property, in which case the hazard insurance of the owner will be continued at his expense during the period of such occupancy.

§ 644.223 Other outstanding rights.

Rights of third parties in the property, other than those discussed above, will be left outstanding: *Provided,* That this is consistent with good real estate practices in the community and will not prejudice the marketability of the property, such as easements for public highways and utilities. Mineral and water rights may also fall within this category. Restrictive covenants of the types held to be against public policy may be waived; however, other types of restrictive covenants must be satisfied or removed by the owner unless they are of a nature which will not prejudice the marketability of the property.

§ 644.224 Administrative waiver.

Division and District Engineers, and/or the Chiefs of their Real Estate Divisions, will determine whether any outstanding right or interest in the property should be administratively waived. Inclusion of such outstanding right or interest in the "subject to" clause of the accepted offer will be evidence of this determination. If they are to be waived, it is important that they be included in the "subject to" clause.

§ 644.225 Hazard insurance.

(a) Properties to be acquired by the United States will usually be covered by hazard insurance. The owner should be advised that any improvements on the land remain his property until title has been vested in the United States by delivery of the deed and loss or damage thereto caused by fire, acts of God, theft, or vandalism, before such vesting of title will be borne by him. The purchase contract will reflect the owner's responsibilities in this respect.

(b) After title has vested, losses to improvements not caused by the willful act or gross negligence of the owner will be borne by the United States. The Government will not carry insurance of any nature on the property except to the extent hereinafter explained. The time and method of cancellation and negotiation for refund of premiums paid will be the responsibilities of the owner.

(c) When FHA receives custody of the property, it will advise the mortgagee that the insurance coverage should be canceled and that the United States does not intend to carry insurance of any nature on the property. If FHA is unable to arrive at an arrangement with the mortgagee in this regard, FHA will obtain a property insurance policy in an amount equivalent to the unpaid balance of the mortgage which the Government has assumed and agreed to pay. FHA will then advise the mortgagee that he may cancel the existing property insurance policy or release it to the former owner for cancellation. Any unearned premiums will be the property of the former owner. Insurance claims arising after agreement between the applicant and the Government must be assigned to the Government.

§ 644.226 Title evidence, title clearance and closing.

The procedures governing the procurement of title evidence, title clearance and closings for fee acquisitions by purchase as set forth in Subpart C will apply generally to acquisition of properties under the Homeowners Assistance program, except as otherwise provided herein. If a survey showing the location of the building on the homesite is available from the lender or other source at little or no cost, it should be included as part of the title evidence in each case. Where reasonable grounds exist for the belief that some irregularity in title might be disclosed by a survey, one should always be obtained by the Division/District and included.

§ 644.227 Preliminary title evidence.

When determination is made that an applicant is eligible for assistance and he has elected to sell the property to the Government, preliminary title evidence for the property will be obtained from the applicant or his mortgagee and furnished to the title company in an effort to reduce costs in obtaining preliminary title opinions.

§ 644.228 Closings.

(a) Closing of the purchase transaction will be accomplished in accordance with the terms of the accepted offer.

(b) All mortgages against the property which the Government has assumed and agreed to pay by the terms of the accepted offer, except the first or primary mortgage, will be paid off and released of record expeditiously after delivery of deed conveying the property to the United States. Normally, this payoff occurs as a part of the closing transaction but after delivery of deed.

(c) The mortgagee may be holding an escrow account on behalf of the applicant to be used for the payment of taxes, mortgage insurance premium and hazard insurance premium as they become payable. Negotiation for refund of amounts paid to this account will be the responsibility of the applicant.

§ 644.229 Notification of conveyance of Title to FHA.

(a) On the date title to the property vests in the United States, the Division/District will notify FHA in writing to assume custody of the property. FHA Form No. 1174 will be used. The property will not be entered on property acquisition or inventory records of the Corps. The notification, together with the keys, will be furnished to the local FHA insuring office which will have the actual management of the property with a copy to the Assistant Commissioner-Comptroller, Federal Housing Administration, Department of Housing and Urban Development, Washington, D.C. 20412, ATTN: Acquired Home Property Section. In addition, FHA should be advised that the deed, title evidence and related papers will be furnished as soon as they are available.

(b) The notification will include the following information:

(1) Appropriate application identification number.

(2) Property location (Street, Number, City, County, State, and Zip Code).

(3) Legal description.

(4) Date title transferred to United States.

(5) Name and address of Government's grantor.

(6) Name and address of mortgagee and unpaid balance owing on mortgage.

(7) Whether property is vacant. If occupied, indicate if lease is written or oral, term, amount of monthly rent, date through which rent is paid and to whom paid and name of tenant.

(8) General condition of property.

(9) Tax information.

(10) Other pertinent information as appropriate.

§ 644.230 Disposition of final title assembly.

Immediate action should be taken by Division/District to furnish necessary evidence showing the Government's title to the local FHA area office having jurisdiction over resale of the respective property involved. This evidence will consist of:

(a) A copy of the deed to the Government,

(b) The preliminary title policy, and

(c) The Attorney's certificate as to vesting of merchantable title in the United States. The final title policy, updated through the date of recordation of the deed, will be sent to the local FHA Area Office as soon as available. At the same time as preliminary title documents are sent to FHA, an information copy of the letter of transmittal will be furnished this office, HQDA (DAEN-REH-O) WASH DC 20314, together with a copy of the deed of conveyance and a copy of the attorney's certificate of title.

§ 644.231 FHA Forms.

FHA Forms No. 1174 (Notification of Military Acquisition) and No. 1173 (Transmittal of Recorded Deed and Title Assembly—Military Acquisition) because of their limited use have been approved for local reproduction.

APPEALS

§ 644.232 Appeals policy.

Section 1013(f) of the Act provides that the provisions of the Act shall be administered in conformance with the requirements contained therein and under such conditions and regulations as the Secretary of Defense may prescribe, and all determinations and decisions made pursuant to such regulations shall be final and conclusive and shall not be subject to judicial review.

§ 644.233 Authority.

Among other things, the S/D delegated to the S/A authority to establish an appeals procedure, with responsibility for final action assigned to a designated component of the Department of the Army. Pursuant thereto, and in conformity with implementing regulations prescribed by the S/D, the appeal procedure in this Section has been established and authority to take final action on appeals has been vested in the Assistant Secretary of the Army (Installations, Logistics and Financial Management).

§ 644.234 Appeal procedure.

(a) The appeal procedure contained in this Section is summarized as follows:

(1) The applicant may file an appeal from a decision denying his application, or from a decision which the applicant believes to be in error as contrary to fact or not in conformance with the provisions of the Act. Any written objection by an applicant to a decision made on his case or to an offer of benefits will be considered to be an appeal. Although the Division/District may reply to the applicant explaining the Government's position, the applicant will be advised, nevertheless, that his written objection is considered to be an appeal and that it will be processed in accordance with the established appeal procedure unless the applicant formally withdraws his objections.

(2) The appeal will be considered at the District level and will be reviewed at the Division and OCE level and a determination will be made at each level as to whether or not favorable action can be taken. An appeal which has been forwarded to a higher echelon of review may not be settled at a lower echelon without the concurrence of the highest echelon to which the appeal has been transmitted.

(3) If favorable action cannot be taken, the appeal will be forwarded by OCE to the Assistant Secretary of the Army (IL & FM) for further review and for final decision.

(b) The requirements of the Administrative Procedure Act do not apply to appeals filed under the Act.

§ 644.235 Applicant's appeal.

(a) An applicant may appeal because of an unfavorable decision as to his eligibility for benefits, or he may appeal because he believes that the benefits offered are insufficient. Each applicant will be notified of the decision made on his application and the reasons for such action. It is anticipated that if applicants are fully informed of the reasons for the decision, the number of appeals will be reduced.

(b) The letter to the applicant notifying him of the decision will contain the following minimum information:

(1) As appropriate, a reference to, or a quotation of, the provision of the Act which is involved in the decision or offer of benefits.

(2) The reasons for the decision.

(3) Notification to the applicant of his right to file an appeal. He should be advised that if he believes the decision is in error because it is not in accord with the facts or the provisions of the Act, he may file an appeal with the Division/District or with the Chief of his Real Estate Division in writing within 180 days from the date of

notice of such unfavorable decision and, if he files an appeal, he should identify the errors, state the reasons for the appeal and submit whatever information he desires in support of his appeal. He should also be advised that his appeal will be considered by the District Engineer and reviewed by the Division Engineer and the Chief of Engineers and, if favorable action cannot be taken, it will be submitted to the Assistant Secretary of the Army (IL & FM) for final decision.

(c) The applicant's reply to the letter notifying him of the decision in his case will be construed broadly as constituting an appeal from such decision.

§ 644.236 Processing of appeals.

(a) Appeals will be processed through channels to HQDA (DAEN-REH-A) WASH DC 20314. Inasmuch as the appeal is based upon a decision by the District Engineer which is considered by the applicant to be adverse to his interest, an opportunity is afforded at each level of review to find in favor of the applicant and to settle the appeal. An attempt will be made to resolve the matter at each level of review as provided in paragraph (d) of this section. If a proposed solution is acceptable to the applicant and the matter is resolved to the satisfaction of the applicant, the matter will be considered a review of an appeal and a withdrawal from appeal status.

(b) After receipt of the appeal, the errors cited by the applicant and the additional information furnished by him in support of his appeal will be investigated promptly by the Division/District. The investigation will be as extensive as required to define clearly the basis for the appeal and to produce information required for its consideration. Upon completion of the investigation, the information submitted with the application will be reconsidered, together with the information obtained as a result of the investigation and a determination made whether favorable action can be taken. A report of the investigation and consideration will be prepared which will include a brief outline of the basis of the application for assistance; the initial decision by the Division/District from which the applicant has appealed; the basis for the applicant's appeal; pertinent information necessary to determine the merits of the appeal; the scope of the investigation and of the consideration of the appeal; the decision on the appeal and the reasons in support thereof. The report will contain the following headings: Applicant's claim for assistance; decision on applicant's appeal; summary of findings on appeal; conclusions and reasons; and recommendations. The applicant will be notified if favorable action can be taken. If favorable action cannot be taken, no communication will be sent to the applicant except that, at the applicant's specific request, he will be advised of the status of his appeal; the appeal will be forwarded to higher authority for review; and the report will become part of the appeal assembly, referred to below.

(c) Where there is an appeal as to value and a brief appraisal report has been used in the initial consideration of the case, consideration should be given to obtaining a full appraisal prior to forwarding the appeal assembly, unless it is being recommended that the matter be settled administratively by OCE.

(d) Where favorable action on the appeal cannot be taken by the Division/District, an appeal assembly will be prepared in sufficient copies to provide one copy for the next higher level of review and two copies (including original papers where available) for submission to OCE. The copy of the appeal containing the original papers will be returned to the Division/District after a decision on the appeal has been reached. The appeal assembly will have a jacket cover or heavy paper backing with a suitable fastener at the top. It will consist of the following items which will be assembled in the order shown below with such variations or additions as the circumstances required:

(1) Investigation and consideration report.

(2) Written appeal and amendments.

(3) Application with attachments.

(4) Approved market impact study, or reference thereto where one has been submitted previously.

(5) Appraisal report.

(6) Pertinent correspondence in chronological order.

(7) Copy of closure announcement or pertinent extract therefrom.

(8) Any other documents or information which have a significant bearing on applicant's claim for assistance.

§ 644.237 Review of appeal by the Division Engineer.

The purpose of this review is to insure that:

(a) The initial decision was in accord with the facts, the provisions of the Act and existing regulations.

(b) The applicant was properly notified why favorable action could not be taken on his application; that he has filed an appeal from this decision and has submitted all of the information he intends to submit in support thereof.

(c) The District Engineer's decision on the appeal is supported by the record.

(d) The appeal assembly contains the necessary information in support of the decision and has been assembled as stated in this Section.

§ 644.238 Action on appeal by the Division Engineer.

Action by the Division Engineer will be taken as expeditiously as possible. If the Division Engineer concurs in the recommendation, additional comments and recommendations, together with the reasons and supporting documents, if appropriate, will be forwarded to OCE. If the Division Engineer does not concur in the District Engineer's recommendation, the matter will be returned to the District Engineer for further consideration or for a directed solution.

§ 644.239 Review of appeal by OCE.

The appeal will be reviewed by OCE. Any deficiency in the appeal assembly will be corrected. If the position of the Division/District is not concurred in, the appeal will be returned for further consideration or for a directed solution. If the position of the Division/District is concurred in, a proposed letter to the applicant denying his application will be sent to the Assistant Secretary of the Army (IL&FM) with the recommendation that it be signed and returned to OCE for dispatch to the applicant.

§ 644.240 Action by the Assistant Secretary of the Army (IL&FM).

Final decision on appeals will be made by the Assistant Secretary of the Army (IL&FM) based on recommendations received from OCE. In the event the recommendations are not approved, the appeal will be returned to OCE for further consideration. If the recommendations are approved, the letter to the applicant denying his appeal will be signed by the Assistant Secretary of the Army (IL&FM) and returned to OCE for dispatch to the applicant. This will constitute a final decision on the applicant's appeal.

§ 644.241 Final action by OCE.

Where the Assistant Secretary of the Army (IL&FM) has not approved OCE recommendations or appeal, the matter will be reconsidered and, if possible, objections resolved at OCE level. Otherwise, the pertinent correspondence will be returned to the Division Engineer with appropriate instructions for further action to be taken. Where the Assistant Secretary of the Army (IL&FM) has approved the recommendations, the letter to the applicant signed by the Assistant Secretary of the Army (IL&FM) will be dispatched by OCE; the pertinent correspondence, including a copy of the appeal assembly with original papers, will be forwarded to the Division Engineer for recording and filing; and the case will be considered closed.

§ 644.242 Dissemination of decisions.

Decisions by the Assistant Secretary of the Army (IL&FM), with respect to appeals, will not be published by OCE. Except as authorized by OCE, Division/District will not refer to such decisions in letters sent to other applicants when notifying them that favorable action cannot be taken on their applications.

Subpart F—Disposal

SOURCE: 45 FR 71266, Oct. 27, 1980, unless otherwise noted.

§ 644.311 General.

Subpart F sets forth general authority, responsibilities, procedures, methods, and guidance for the performance of real property disposal functions.

§ 644.312 Applicability.

Subpart F is applicable to Division and District Engineers having real estate responsibilities.

§ 644.313 Authority.

The major portion of real property disposal actions performed by the Corps of Engineers is predicated on authority derived from the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471, et seq.), hereinafter referred to as the Federal Property Act, and the rules, regulations and delegations of authority issued by the General Services Administration (GSA) thereunder. Other authorities relating to the disposal of military real property are found in AR 405-90. The Army and Air Force Basic Real Estate Agreements covering disposal of Air Force real estate are found in AR 405-5 and AFR 87-15.

§ 644.314 Rules and regulations of the General Services Administration (GSA).

Under the rules, regulations and delegations of authority issued by GSA under the Federal Property Act, the military departments are authorized to dispose of the following:

(a) Real property under its control (except land withdrawn or reserved from the public domain), together with the improvements thereon and related personal property, which has a value of less than $1,000.

(b) Leases, permits, licenses, easements, or similar interests, including Government-owned improvements on the premises, unless it is determined that the interest should be included with the disposal of other property being reported to GSA for disposal.

(c) Fixtures, structures, and improvements of any kind to be disposed of without the underlying land.

(d) Standing timber and embedded gravel, sand, and stone to be disposed of without the underlying land.

§ 644.315 Disposal priorities.

Consistent with the best interest of the United States and with applicable laws and regulations, the following priorities should be followed in disposing of real property no longer needed by the Departments of the Army and Air Force:

(a) Transfer to other Department of Defense agencies and the U.S. Coast Guard.

(b) Transfer to other Federal agencies.

(c) Conveyance to eligible non-Federal agencies.

(d) Sale to the public.

§ 644.316 Environmental considerations.

The National Environmental Policy Act of 1969 (NEPA), as amended, (42 U.S.C. 4321 et seq.) directs that a five point Environmental Impact Statement (EIS) be prepared, circulated among interested Federal, State and local agencies, and filed with the Environmental Protection Agency (EPA) before a major Federal action is taken which affects the quality of the human environment. This may include some disposals. No major disposal action will be undertaken where the Corps of Engineers is the disposal agency, or is acting for the disposal agency, until the required EIS has be submitted to the EPA unless a "Finding of No Significant Impact" (FONSI) has been prepared for the action, or if the action is classified as a "categorically excluded" item because it has no significant effect on the environment. The Environmental Assessment is subject to review and approval in accordance with instructions found in AR 200-1 and AR 200-2 (to be printed) for military real property disposal, and the forthcoming Engineer Regulation for civil works real property disposal. Where property is reported to GSA for disposal, GSA is responsible for compliance with NEPA.

§ 644.317 Preserving historic landmarks and properties.

Purposes of the National Historic Preservation Act of 1966, as amended, (16 U.S.C. 470) and Executive Order 11593, Protection and Enhancement of the Cultural Environment (13 May

1971) will be set forth in Subpart H (to be published) and the authorities there cited also apply to the disposal of real property. Specific policy guidance in connection with disposals having historic significance is published in AR 200-1 and AR 405-90 for military real properties and in ER 1105-2-460 for civil works real properties.

(a) The Criteria of Adverse Effect on eligible properties may occur under conditions which include but are not limited to:

(1) Destruction or alteration of all or part of a property.

(2) Isolation from or alteration of the property's surrounding environment.

(3) Transfer or sale of a property without adequate conditions or restrictions regarding preservation, maintenance, or use.

(b) It is normally intended that the agency responsibilities under Section 106 of the National Historical Preservation Act of 1966 and Executive Order 11593 run concurrently with the NEPA review process. However, obligations pursuant thereto are independent from NEPA requirements and must be complied with even when an environmental impact statement is not required.

§ 644.318 Compliance with State Coastal Zone Management Programs.

Subpart H will outline the provisions of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 et seq.). These provisions also apply to the disposal of land or water resources when the action is subject to the Federal consistency requirements of the Act and when the disposal is consistent with an approved state management program.

§ 644.319 Protection of wetlands.

The requirements of Executive Order 11990, Protection of Wetlands, 42 FR 26961, (24 May 1977) are applicable to the disposal of Federal lands and facilities, and the policy and procedures implementing the Order will be set forth in Subpart H (to be published).

§ 644.320 Floodplain management.

The requirements of Executive Order 11988, Floodplain Management, 42 FR 26951, (24 May 1977) and its implementation will be outlined in Subpart H (to be published). In accordance with ER 1165-2-26, paragraph 13, when civil works property in floodplains is proposed for disposal to non-Federal public or private parties, the Corps of Engineers shall reference in the conveyance those uses that are restricted under Federal, State and local floodplain regulations and attach other restrictions to uses of the property as may be deemed appropriate.

§ 644.321 Nondiscrimination covenant.

As required by Section 101-47.307-2 of the Federal Property Management Regulations (FPMR), substantially the following covenant will be included in all deeds or other disposal instruments to public bodies when the sale is negotiated under Section 101-47.304.9(4) of the FPMR:

> The grantee convenants for itself, its heirs, successors, and assigns and every successor in interest to the property hereby conveyed, or any part thereof, that said grantee and such heirs, successors, and assigns shall not discriminate upon the basis of race, color, religion, age, sex, handicap, or national origin in the use, occupancy, sale, or lease of the property, or in their employment practices conducted thereon. The convenant shall not apply, however, to the lease or rental of a room or rooms within a family dwelling unit; nor shall it apply with respect to religion to premises used primarily for religious purposes. The United States of America shall be deemed a beneficiary of this convenant without regard to whether it remains the owner of any land or interest therein in the locality of the property hereby conveyed and shall have the sole right to enforce this covenant in any court of competent jurisdiction.

§ 644.322 Disposition of proceeds from disposal.

(a) *Land and Water Conservation Fund.* Except as provided in (b) and (c) of this section and unless otherwise obligated by existing or future acts of Congress, all proceeds received from any civil works project disposal of surplus real property or related personal property under the Federal Property

Act, shall be covered into the land and water conservation fund in the Treasury of the United States (16 U.S.C. 460L-5(a), FPMR Section 101-47.307-6). This includes the net proceeds from the sale of timber and structures.

(b) *Department of Defense Family Housing Management Account.* Section 501(b) of Pub. L. 87-554, as amended, 42 U.S.C. 1594a-1, provides that the proceeds from the disposal of family housing of the Department of Defense, including related land and improvements, shall be transferred to Family Housing Management Account, Defense. This does not include civil works housing, or houses on land acquired for military purposes unless the housing was specifically acquired to house military personnel. This means that excess military family housing and related land and improvements should be reported to GSA on Standard Form 118 separate and apart from Reports of Excess for other portions of an excess installation. Particular care should be taken to ensure that the following statement be included in each such report of excess to GSA:

> Net proceeds from the sale of family housing, including related land and improvements, shall be remitted to the Department of Defense for deposit to Family Housing Management Account, Defense (97 X 0700).

(c) *Proceeds from Sale or Transfer of Property Acquired.* Under Section 5 of the Act of 13 June 1902, as amended (33 U.S.C. 5[illegible]3), the proceeds from a sale or transfer of buildings or other improvements on river and harbor improvement projects may be credited to the appropriation for the work for which the property was acquired. Buildings or other improvements, including timber, which are on nonexcess land come within the purview of this law. Where both land and buildings or other improvements are excess, proceeds from the sale of land and buildings, or either one, will be deposited in the land and water conservation fund as provided in paragraph (a) of this section.

§ 644.323 Neutral language.

Wherever the words "man", "men", or their related pronouns appear in this subpart, either as words or as parts of words (other than when referring to a specific individual), they have been used for literary purposes and are meant to include both female and male sexes.

§§ 644.324—644.325 [Reserved]

PROCEDURE FOR PLACING REAL PROPERTY IN EXCESS STATUS

§ 644.326 Army military real property.

Military real property, including industrial real property, under the control of the Department of the Army will be placed in excess status as outlined in AR 405-90.

§ 644.327 Air Force military real property.

Military real property under the control of the Department of the Air Force will be placed in excess status as outlined in AFR 87-4.

§ 644.328 Army military leased property.

(a) Department of the Army command installations or parts thereof held by lease, permit, or other similar right of occupancy, excess to the needs of the using service will be reported direct to the Division of District Engineer for disposition wherever essential continuing operations of the installation will not be adversely affected, and the annual rental does not exceed $50,000.

(b) Division Engineers are authorized to make the finding that leased real estate of the Corps of Engineers, where essential continuing operations of the installation are not adversely affected, and the annual rental does not exceed $100,000, is excess and to take necessary action to cancel or otherwise dispose of leases.

(c) Any leased command real estate not coming within the category outlined in paragraphs (a) and (b) of this section will not be considered by the Division Engineer as excess until notice is received from the Chief of Engineers (COE) that the property has been placed in excess status in accordance with AR 405-90.

§ 644.329 Army civil works real property.

(a) *Fee-Owned Land and Easements.* (1) Action by Division/District Engineer (DE). When the DE is of the opinion that real property acquired in fee or easement for a civil works project is no longer required for such purpose, he will submit a report and recommendation to HQDA (DAEN-REM) WASH DC 20314, accompanied by:

(i) A brief description of the character or nature of the land with an appropriately marked map showing the approximate acreage consideration to be excess. Detailed perimeter descriptions need not be procured or furnished with the report and recommendation for excessing.

(ii) Description of buildings and improvements.

(iii) Information as to circumstances that might hinder or prevent disposition, e.g. remoteness of location, unfavorable topography, and lack of legal access.

(iv) Information as to when and how the property was acquired.

(v) Information as to the estate which the Government has in the land, reservations and exceptions in and to the Government's title, and outstanding interests granted by the Government or reserved or excepted in the acquisition of the land, will be stated with particularity. The map or plat will delineate any grant, exception or reservation, such as telephone, telegraph, electric transmission, oil, gas, and water lines.

(vi) Purchase price of lands (estimate if only a portion of original tract), buildings and improvements acquired with the lands, and the cost of buildings and improvements, if any, constructed by the United States.

(2) *Action by the Office of the Chief of Engineers.* When the value of an easement interest reported pursuant to (a)(1) of this section does not exceed $1,500, OCE will make the final determination of excess and authorize action accordingly. In the case of fee-owned land regardless of value, or easement interests having a value in excess of $1,500, when OCE finds that no requirement for the property exists, a recommendation will be made to the Secretary of the Army that authority be granted for disposal of the property.

(b) *Leaseholds.* When the DE is of the opinion that real property acquired by lease for a civil works project is no longer required for such purpose, and after screening the property for other Federal requirements in accordance with §§ 644.333 through 644.339, he will take necessary action to terminate the lease in accordance with the procedure outlined in §§ 644.444 through 644.471.

§§ 644.330—644.332 [Reserved]

SCREENING, REASSIGNMENT AND TRANSFER OF REAL PROPERTY

§ 644.333 Screening for defense needs.

Real property which becomes excess to the needs of any element of the Army or Air Force will be screened against requirements of other Department of Defense (DOD) agencies and the U.S. Coast Guard in order to promote and obtain the most efficient and complete utilization of real property before disposing of it.

(a) *Procedure for Screening Army Military Property.* Screening for defense requirements with respect to base closures publicly announced by the Secretary of Defense or Secretary of the Army which result in excessing of real property will not be accomplished unless directed by HQDA (DAEN-ZCI) Washington DC 20314. Instructions to screen will be included in the disposal directive transmitted to the DE when such action is desired. In the absence of such instructions, it is presumed that DOD has negatively evaluated all possible requirements of DOD agencies before making the public announcement.

(1) *Fee-owned Land.* Screening is required in all other cases unless specifically directed otherwise. Property will be screened simultaneously against other Army requirements, and for Navy, Air Force, Coast Guard, and Defense agency requirements. The property should also be screened against known Department of the Army Civil Works requirements.

(i) The DE will dispatch a screening message promptly upon receipt of an excess directive or recommendation pursuant to AR 405-90. The sample screening message in EP 405-1-2 at Figure 11-1, or a letter similar in form and content will be used without substantial deviation.

(ii) All action addressees and parties listed for information on Figure 11-1 in EP 405-1-2 will be included, except that Air Force real property in Hawaii will be screened with the Commander-in-Chief, Pacific Air Forces, in lieu of HQ, USAF. The appropriate major Army command, when not the using command, will be listed as an action addressee.

(iii) In no case will screening be deferred unless authorized by DAEN-REM. At the expiration of the screening period (normally 30 days) a report of results will be forwarded and subsequent action initiated as provided in paragraph (e) of this section.

(iv) For certain cases, most frequently in connection with base realignments or Executive Order 11954 surveys, accelerated screening procedures are set out in AR 405-90.

(2) *Capehart and Wherry Housing Projects.* Due to the complicated financial arrangements under which such projects are constructed and operated, the disposal thereof, whether separately or as a part of a larger installation, requires careful study. In order to assure maximum time in which to discover and evaluate problems arising in each of such cases, the DE will notify HQDA (DAEN-REM) Washington DC 20314, by teletype, immediately upon receipt of information of an installation commander's recommendation of excess involving Capehart and acquired Wherry housing projects. Included with this notice will be advice on the source of utilities and any problems of which the DE may be aware.

(b) *Leaseholds, Buildings and Improvements.* Leaseholds, buildings, and other improvements will not be screened formally within the Department of the Army (DA). When such property is made available or disposal under AR 405-90 and §§ 644.326 through 644.329, it will be screened by the responsible DE with the Air Force, Coast Guard, and Navy and against known Army military and civil works requirements within the Division. Screening with the Air Force of leaseholds having an annual rental in excess of $50,000 will be addressed to HQ, USAF. Other Air Force screening under this subparagraph will be with local Air Force installations. Screening with the Navy will be addressed to the appropriate naval district. Screening with the Coast Guard and Defense agencies will be with the local representatives of those agencies. Property under the jurisdiction of GSA which has been assigned to the DA or Department of the Air Force (DAF) for use is not subject to this screening procedure, but the DE will determine whether such property would serve any current unfulfilled real property acquisition directives pending in his office.

(1) *Family Housing Leases.* Family housing leases under authority of Section 515, Pub. L. 84-161, 69 Stat. 352, as amended and extended, will be terminated promptly upon determination that the property is excess to the needs of the using command, without screening for other requirements.

(2) *Limit Screening.* Screening which would serve no useful purpose is to be avoided. Screening of buildings and improvements on sites needed for approved construction should be limited as construction schedules require. The DE will take timely action to minimize additional cost and rental payments due to screening and may, at his discretion, limit screening of leaseholds and improvements to be removed from the site to informal notices to appropriate local Defense agencies. The DEs are authorized to waive screening of nonassignable or short term interests in real property when such screening would serve no useful purpose.

(3) *Notice of Restoration Requirements.* All screening notices of leaseholds and improvements available for off-site removal will indicate that transferees will be required to perform necessary site restoration as a prerequisite to obtaining transfer and will reflect the extent of restoration required.

(c) *Procedure for Screening Civil Works Property.* Buildings and improvements, leaseholds, and fee-owned land that have been determined excess to civil works requirements in accordance with this Part will be screened with the appropriate major Army and local service commanders, and with the Navy, Air Force, Coast Guard, and

Defense agencies. (GSA property assigned to the Army for use is not subject to formal screening hereunder but will be screened against known acquisition directives or requirements in the DE office.) Except to the extent that DEs determine they are inappropriate, screening procedures for civil works property will be the same as for Army military property.

(d) *Screening of Air Force Property.* HQ, USAF and the major Air Force commands screen Air Force real property before authorizing disposal action by the Corps of Engineers in accordance with AFR 87-4. DEs will act on requests for disposal action on buildings and improvements and leased property received directly from major Air Force commands which conform with AFR 87-4. Disposal directives on fee-owned land and easements will be issued by HQ, USAF and referred through DAEN-REM.

(e) *Report on Screening and Related Actions.* Immediately following the screening of fee-owned land, the DE will forward to DAEN-REM a report of the results of the screening (with comments and recommendations where a further Army or other Defense requirement is indicated). This report will serve as one of the basis of a determination whether the property is excess to the rquirements of the DOD. Upon dispatch of the screening report, the DE will proceed with further action pursuant to §§ 644.340 through 644.347 and §§ 644.385 through 644.389. No report on screening of civil works property is required unless there is a request for transfer or reassignment of the property screened.

(f) *Property with an Estimated Value of $50,000 or Less.* If the property has an estimated value of $50,000 or less, the determination that the property is excess to Army requirements will be made by the Department of the Army without referral to DOD, and the Chief of Engineers will direct the DE accordingly. Upon receipt of this disposal directive, prompt action will be taken to report the property to GSA or take other disposal action as appropriate.

(g) *Estimated Value in Excess of $50,000.* If military property has an estimated value in excess of $50,000, it must be reported to the Armed Services Committees of Congress pursuant to Title 10, United States Code, Section 2662. The final Army determination of excess and recommendations to the Assistant Secretary of Defense (MRA&L) to approve the proposed disposal report to the Armed Services Committees by the Chief of Engineers, utilizing Real Estate Disposal Report, ENG Form 2187R, are combined in a single action. The Chief of Engineers will advise of DOD approval of the proposed disposal when made. Upon receipt of this information responsible Division and District Engineers will furnish GSA a preliminary report of excess. The preliminary report of excess will be finalized, upon receipt of instructions from the Chief of Engineers. This procedure is also applicable to Air Force disposals. If the preliminary report of excess is sufficiently complete and accurate, it may be finalized by letter or simple statement on Standard Form 118, Report of Excess Real Property.

(h) *Date of Excess for Reporting Purposes.* From the above, it will be noted that where property has an estimated value in excess of $100,000, the determination that the property is excess to the requirements of the Department of the Army is, in effect, made concurrently with the determination that the property is excess to the requirements of the DOD, or is approved for transfer to another military department. For all practical purposes, these determinations are best evidenced by the Assistant Secretary of Defense's approval of the proposed disposal. The date of approval may be used as the date the property was determined excess to Army requirements for reporting purposes.

§ 644.334 Reassignment and transfer procedures.

Reassignment refers to the changing of the administrative or command jurisdiction of real property from one command to another within the same military department. Reassignments may be accomplished by the Secretary or the staff without prior approval of the DOD or the Armed Services Committees of the Congress. *Transfer* refers to changing the jurisdiction for using and administering real property from one military department to another.

(a) *Reassignment Procedures—Army*—(1) *Military.* Reassignments of military real property are accomplished pursuant to a directive from DAEN-REM. These are not real estate disposal actions.

(2) *Civil Works.* Reassignments from civil works to military jurisdiction, and vice versa, are accomplished pursuant to directive or approval of the Secretary of the Army based on the recommendations of the Chief of Engineers.

(3) *Information Required.* Information to support recommendation for reassignments of military or civil real property to another using service of the Army, or to change the military or civil accountability within the Corps, will be furnished by the DE to DAEN-REM as follows:

(i) Reference to excess directive, if any.

(ii) Description and map of lands.

(iii) Date, manner, and cost of acquisition of land and improvements.

(iv) Reference to any encumbrances which might affect the reassignment and use.

(v) Proposed effective date of reassignment.

(vi) Proposed new use.

(b) *Reassignment of Air Force Property.* The Air Force Staff reassigns real property within the Department of the Air Force.

(c) *Transfer of Military Property.* Procedure for transfer among military departments is substantially the same as for transfer to other Federal agencies, and is set forth in §§ 644.400 through 644.443 and §§ 644.472 through 644.500.

§ 644.335 Screening of excess DOD property for nondefense Federal agency needs.

(a) *Screening by GSA.* (1) GSA will screen all excess real property reported to it for disposal, to determine whether the property is surplus to all Federal agencies.

(2) GSA will screen certain classes of excess real property which must be reported to it for screening, even though the Department of the Army will act as the disposal agency (§§ 644.348 through 644.367).

(3) Under the FPMR, Federal agencies are allowed 30 days to advise whether there is a tentative or firm requirement and another 30 days to determine and advise whether the tentative requirement is firm. Where there is a firm requirement, agencies are allowed an additional 60 days to prepare and submit a formal request for transfer pursuant to FPMR Section 101-47.203-7. The DE should obtain from GSA information on the status of screening if advice is not furnished promptly after expiration of the screening period.

(b) *Screening by Corps of Engineers.* Properties which are not reported to GSA for disposal or screening will be screened by the DE with nondefense Federal agencies at the same time they are screened with Defense agencies. Screening of such properties will be limited to agencies that maintain local offices and may be done on an informal basis. The DE may waive screening of nonassignable and short term interests in real property when they determine such screening will serve no useful purpose. When screening discloses no requirement, the property will be determined surplus and disposed of.

§ 644.336 Notices to Departments of Interior (DI); Health and Human Resources (HHR); Education; and Housing and Urban Development (HUD).

Simultaneously with screening under § 644.335 notices of availability will be given to DI of land suitable for public park and recreation or an historical monument site; to HHR and/or Department of Education property suitable for educational purposes or to protect the public health, and to HUD of property for housing and related facilities (Section 101-47.203.5 FPMR). Where such notice is given, these departments will be notified promptly, if screening discloses another Federal requirement for the property. They will also be notified if there is no other Federal requirement and the property is determined surplus.

§§ 644.337—644.339 [Reserved]

CLEARANCES—ARMY MILITARY REAL PROPERTY

§ 644.340 Reports to the Armed Services committees.

(a) Sections 644.340 through 644.347 describe the responsibilities of the Chief of Engineers in, and prescribes procedures for, clearing proposals for certain leasing and for disposals of Army real property with the Department of Defense and the Armed Services Committees of the Senate and House of Representatives. (The Air Force obtains its own clearance.) It is applicable to Division and District Engineers having military real estate responsibility. Clearance is not required for civil works properties.

(b) Title 10 U.S.C. 2662 as amended by Pub. L. 96-418, dated 10 Oct. 1980, provides, in part that:

> (a) The Secretary of a military department, or his designee, may not enter into any of the following listed transactions by or for the use of that department until after the expiration of 30 days from the date upon which a report of the facts concerning the proposed transaction is submitted to the Committees on Armed Services of the Senate and of the House of Representatives:
>
> * * * * *
>
> (3) A lease or license of real property owned by the United States, if the estimated annual fair market rental value of the property is more than $100,000.
>
> (4) A transfer of real property owned by the United States to another Federal agency or another military department or to a State, if the estimated value is more than $100,000.
>
> (5) A report of excess real property owned by the United States to a disposal agency, if the estimated value is more than $100,000.
>
> (6) Any termination of modification by either the grantor or grantee of an existing license or permit of real property owned by the United States to a military department, under which substantial investments have been or are proposed to be made in connection with the property by the military department.
>
> * * * * *
>
> (c) This section applies only to real property in the United States, Puerto Rico, Guam, the American Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands. It does not apply to real property for river and harbor projects or flood control projects, or to leases of Government-owned real property for agricultural or grazing purposes or to any real property acquisition specifically authorized in a Military Construction Authorization Act.
>
> (d) A statement in an instrument of conveyance, including a lease, that the requirements of this section have been met, or that the conveyance is not subject to this section, is conclusive.

(c) While not specifically required by 10 U.S.C. 2662, DOD has directed that all proposed relinquishments of public domain land will be reported to the Armed Services Committees where (1) the area exceeds 500 acres or (2) the estimated fair market value of the property exceeds $100,000.

§ 644.341 Clearance with the Armed Services committees.

(a) Prior to a final report of excess, or transfer to another Federal agency or a State, of any Government-owned military real property with an estimated value, including the value of existing improvements, in excess of $100,000, the proposed disposal must be reported to the Committees. Also, proposals to outlease military real property for other than agricultural or grazing purposes must be reported if the estimated annual rental consideration is more than $100,000. A formal appraisal for estimating value need not be made. Reports to the Committees pertaining to Army military real property are made by the Chief of Engineers, and copies of reports are furnished the two senators of the State, and the congressman of the district where the property is located. Reports pertaining to Air Force property are made by that department. DEs, upon request, will assist Air Force commands in assembling the required data.

(b) For Army property, data will be furnished in the format shown in Figure 11-2 (ENG Form 2187-R, Real Estate Disposal Report) in EP 405-1-2, and three copies forwarded to HQDA (DAEN-REM) WASH DC 20314. The information should be submitted within three weeks after dispatch of the screening message, or within three weeks after receipt of the disposal directive when screening is not required.

(c) Clearance for transfer to another military department is obtained by the acquiring department. However, HQDA (DAEN-REZ-L) obtains clearance for transfer of Army property to a nondefense Federal agency where authorized by law.

§ 644.342 Prior approval of Department of Defense.

(a) DOD Instruction 4165.12 requires advance approval by the Assistant Secretary of Defense (MRA&L) of disposal actions requiring congressional committee clearance. DOD approval is also required for withdrawal from excess of real estate, or an interest in real estate, which has an estimated fair market value in excess of $100,000.

(b) The data submitted pursuant to § 644.341 will be used to obtain DOD approval of projects to be submitted to the Armed Services Committees. Appropriate information will be furnished to obtain required DOD approval of withdrawals from excess.

§ 644.343 Additional data for clearance with the committees.

To support Army witnesses appearing before the Armed Services Committees, and to satisfy other information requirements, include the following data when forwarding the ENG Form 2187-R:

(a) Four copies of a site plan of the installation, clearly depicting the property involved, and four copies of a real estate map, color coded with legend, showing the area and acreage to be excessed.

(1) Segment-size maps and plans should be of excellent quality, current, show accurate acreages, and current name of installation. They must be clearly visible at a distance of 30 feet or more.

(2) Basic color codes for maps are:

Red—Excess Area(s)
Green—Retained Area
Yellow—Previously Excessed Area(s)
Black or Dark Blue—Installation Boundary, heavy definition
Other Colors—for other purposes

(b) Copy of last utilization inspection report, plus information as to when and how the excess property was last used by the Army.

(c) Basis for disposal: Base closure announcement; E. O. Survey; Command Report of Excess; Report of Availability; etc.

(d) A list of and general terms of any outgrants in effect on the excess area.

(e) Whether continuing military activities are housed on the property proposed for disposal; arrangements which have been made to provide space for these activities; estimated cost of leasing or converting space for that purpose, and any other costs of closing or severing the installation and relocating the activities.

(f) Whether civilian employees will lose their employment, number of employees involved, and to what extent they can be employed elsewhere.

(g) Details of significant history of acquisition, development, and disposal, if not included in ENG Form 2187-R. Include official name of installation and former designations.

(h) Description of any related or off-post family housing, giving number of units, type (MCA-Capehart, etc.) acreage of site, land and construction costs, and distance from installations served.

(i) Probable impact on local economy, if any.

(j) Estimate of any annual savings in operating and maintenance costs.

(k) Statement as to exchange potential of excess area.

(l) Estimate of value, including any restrictions or limitations on prospective use of the land by subsequent users.

(m) Character and use of area in vicinity of excess area.

(n) Care and custody costs for excess area.

(o) Staff/MACOM coordination.

(p) Environmental Assessment.

(q) Any other pertinent information, e.g., any adverse factors severance or undesirable impact on utility systems, and local interest in acquiring the property.

(r) Congressional district in which the property is located.

§ 644.344 Coordination with GSA.

At the time of formal submission of the Disposal Report to the Armed Services Committees, DAEN-REM will furnish copies to the DEs and to the central and regional offices of GSA as advance information to permit preliminary disposal planning.

§§ 644.345—644.347 [Reserved]

REPORTS OF EXCESS REAL PROPERTY AND RELATED PERSONAL PROPERTY TO GENERAL SERVICES ADMINISTRATION (GSA)

§ 644.348 Delegation of authority to division and district engineers.

Much of the authority and responsibility of the COE as real estate agent for the Departments of the Army and Air Force to report excess real and related personal property to GSA in accordance with the provisions of the Federal Property Act, and the Federal Property Management Regulations (FPMR), Subpart 101-47.3, has been delegated to Division and District Engineers having responsibility for real estate operations. Final reports will be made only after the property has been determined excess to the needs of the Department of Defense, in accordance with §§ 644.333 through 644.339, and has been cleared with congressional committees, if required, in accordance with §§ 644.340 through 644.347.

§ 644.349 Excess property reported for disposal.

The following types of excess real property must be reported to GSA for disposal, utilizing Standard Form 118 (SF 118), Report of Excess Real Property, as set forth in § 644.355:

(a) *Fee-owned.* All fee-owned property, with improvements and related personal property, which has, in the opinion of the DE, an estimated fair market value of $1,000 or more, together with such incidental, related, or appurtenant lesser interests, with or without Government-owned improvements and related personal property, held under lease, permit, license, easement, or similar instrument, useful in connection therewith, except property which is subject to:

(1) A lease containing an option to purchase;

(2) A lease containing a right of first refusal to purchase or to lease for an additional period;

(3) A right in the Government's grantor to the reversion of title; or

(4) A right reserved by the Government's grantor to repurchase the property.

(b) *Public Domain.* All withdrawn or reserved public domain lands, together with the improvements thereon which, in the opinion of the DE, have an estimated fair market value of $1,000 or more, and for which notification, pursuant to 43 CFR 2374.1, has been received from the Bureau of Land Management (BLM) that the property, in effect, has been determined excess within the meaning of the Federal Property Act (see §§ 644.376 through 644.384 for procedures for disposal of public domain land). Minerals in the lands will be specifically excluded from the report of excess unless BLM advises otherwise. The Report of Excess, SF 118, will include as a part of the report on the Government's legal title, a true copy of the notice by BLM to report the property excess, and information of record in BLM on claims, if any, by other agencies, and any claims or encumbrances under the public land laws.

§ 644.350 Excess property reported for screening.

The types of property described in paragraphs (a), (b), and (c) of this section must be reported to GSA for screening purposes notwithstanding the fact that the military departments have been delegated authority to dispose of such property. SF 118 will be utilized for reporting these types of property without attaching the usual Schedules A, B, and C and supporting documents. A notice should be included on the face sheet that "This report is made for screening purposes only. Disposal will be accomplished by the Corps of Engineers." Distribution of copies of such reports within the departments is not required.

(a) Land held under lease, permit, license, easement, or similar instrument, other than listed in § 644.351.

(b) Improvements located on nonexcess Government-owned lands (including improvements on land held under permit from another Government agency; see §§ 644.376 through 644.384, for preliminary procedure in these cases), which improvements, with related personal property, in the opinion of the responsible DE, have an estimated net salvage value of $1,000 or more.

(c) Improvements located on excess land held under lease or other temporary right of occupancy (even though a report of excess is not required for the leasehold itself or other right of occupancy interest under the criteria set forth in § 644.351) when, in the opinion of the DE, the improvements have a net salvage or market value of $1,000 or more, and it is proposed to dispose of such improvements by sale for removal from site. The report of excess will contain an estimate of the cost of restoration necessary under the lease that a prospective transferee agency will be required to assume.

(d) Fee-owned property which, with improvements and related personal property, in the opinion of the responsible Division or District engineer, have a fair market value of $1,000 or more, and is not reported to the General Services Administration for disposal as a result of the exception contained in § 644.349(a) (because of outstanding options to purchase, etc., or because of rights retained by the Government grantor).

§ 644.351 Excess property exempted from reporting.

No reports to GSA are required for the following types of excess property:

(a) Fee-owned land, including withdrawn or reserved public domain land which BLM made available for disposal under Federal Property Act, together with the Government-owned improvements and related personal property, having an estimated fair market value of less than $1,000 in the opinion of the responsible DE;

(b) Excess non-Government-owned property held under lease, license, easement, or similar instrument, when Government-owned improvements with related personal property have a net salvage value of less than $1,000 or are to be transferred to the owner of the land in restoration settlement, and;

(1) The lease or similar instrument is subject to termination by the grantor of the premises within nine months; or

(2) The remaining term of the lease or similar instrument, including renewal rights, will provide for less than nine months of use and occupancy; or

(3) A provision of the lease or similar instrument would preclude transfer to another Federal agency or disposal to a third party; or

(4) The lease or similar instrument provides for use and occupany of space for office, storage, and related facilities, which does not exceed a total of 2,500 square feet; or

(5) Where additional rental would be incurred.

(c) Excess Government-owned improvements on nonexcess land, which improvements, in the opinion of the responsible DE, have a net salvage value of less that $1,000.

(d) Leased space assigned by GSA, and land and improvements owned by and permitted from other Government agencies.

(e) Excess timber, sand, gravel and stone-quarried products, and growing crops on nonexcess land regardless of value.

(f) Excess withdrawn or reserved public domain lands, regardless of value, which are offered to and accepted by the Department of the Interior for return to the public domain pursuant to §§ 644.376 through 644.384.

(g) Prefabricated movable structures, such as Butler-type storage warehouses and quonset huts, and housetrailers (with or without undercarriages), which are located on nonexcess land for off-site use. These types of structures shall be reported as personal property in accordance with FPMR, Part 101-43, Utilization of Personal Property. However, when such structures are located on leased or permitted land subjecting the Department to any restoration obligations, the property will be treated as real property for the purpose of satisfying such obligations to the maximum extent feasible.

§ 644.352 Evaluation and reporting of flood hazards.

Pursuant to Executive Order 11296, 10 August 1966, the DE having civil works responsibility for the area where property proposed for disposal is located will evaluate the property (civil or military) for the presence of flood hazards. If such hazards are found, a report will be forwarded to HQDA (DAEN-REM) recommending appropriate restrictions with respect to future uses of the property, or that the property be withheld from disposal. If decision is made to proceed with disposal, detailed information regarding the flood hazard will be reported to GSA on SF 118 as required by FPMR, 101-47.202-2, with the appropriate restrictions with respect to use of the property by a purchaser and his successors. (See ER 1105-2-40 for information on the Flood Plain Management Services Program.)

§ 644.353 Determination of values for reporting.

Where more than one parcel or item of excess property is involved at the same project or installation, the total value of all such parcels or items will be included in determining whether the property has an estimated value of $1,000 or more for the purpose of making reports of excess. Estimates of value should be made by qualified real estate employees, but not necessarily by a professional appraiser.

§ 644.354 Conditional reports of excess.

As an exception to its general policy, GSA has agreed with the Department of Defense to accept reports of excess on some facilities with instructions on their disposal, specifically:

(a) *Defense Industrial Reserve (DIR).* The Defense Industrial Reserve Act 50 U.S.C. 451 et seq., authorizes the Secretary of Defense to determine which excess industrial properties should become a part of DIR and to formulate a national security clause or recapture provisions to preserve the production capacity of the plants for use in the event of a national emergency. Excess DIR plants are reported to GSA for disposal subject to the national security clause or the recapture provisions. (See FPMR Subsection 101-47.306-2 for procedures where GSA is unable to dispose of the property because of the restrictions imposed by the national security clause or recapture provisions.)

(b) *Reserving Property for Civil Defense Purposes.* GSA has agreed to accept reports of excess of missile sites and other facilities having similar protective features, with restrictions on their disposal. DEs will be notified when DOD advises that a specified local government unit is interested in acquiring such property. Reports of excess will specify the local government unit interested. Disposal of the property will be limited to conveyance to the local government unit, with conditions restricting its use to civil defense purposes for a period of 20 years, with reverter to the United States for breach of condition. In appropriate cases, GSA will enter into a temporary lease arrangement if necessary to afford a local government unit an opportunity to obtain the necessary funds for purchase. This procedure is limited to cases where DOD has determined and advised there is a civil defense need. Disposal action will not be delayed pending receipt of such advise.

§ 644.355 Preparation and submission of reports of excess.

(a) *Preparation*—(1) *General.* Reports of excess will be prepared on SF 118, with schedules, in accordance with the instructions contained in FPMR section 101-47.4902, and § 644.349 herein. However, since the type of information called for a Block 9 of standard form (SF) 118 and Columns f, g, h, and i of schedule A is not generally applicable to camps, airfields, etc., such information will be furnished only when it is available and can be furnished without additional cost. Reports of excess will include all related or appurtenant easements, licenses, and related personal property. Decontamination data will be included as prescribed in §§ 644.516 through 644.539. Information on flood hazard will be included as required by § 644.352.

(2) *GSA Regulations.* Pursuant to GSA regulations, all final reports of excess will be made only after the

property has been determined excess to the needs of the Department of Defense and will bear the statement: "This property has been screened against the known defense needs of the Department of Defense." Report of excess will indicate that the provisions of Title 10, United States Code, Section 2662, requiring reports to the Armed Services Committees of Congress, have been met, or that the report of excess is not subject to this section.

(3) *Reports of Excess—Air Force Property.* The Air Force will prepare SF 118, with Schedules A and C, and transmit them to the DE for completion and execution. Land descriptions, title reports, and other data required by the FPMR will be the responsibility of the DE.

(4) *Reports of Excess—Army Property.* DEs will prepare the SF 118 and the schedules for excess Army property.

(b) *Submission.* Reports of excess will be transmitted directly by the DE to the appropriate regional office of GSA. Each DE making such reports of excess will assign a number in Block 1 of SF 118, beginning with No. 1 for the first report and continuing in numerical sequence for succeeding reports made during the calendar year. The number will be preceded by the symbol of the DE making the report and the calendar year e.g., SWF-79-6, for the sixth report submitted by Fort Worth District of Southwestern Division for calendar year 1979.

§ 644.356 Report on Government title.

In all cases where Government-owned land is reported, there shall be attached to and made a part of SF 118 (original and copies thereof), a report prepared by a qualified employee of the holding agency on the Government's title to the property, based upon his review of the records of the agency. The report shall recite:

(a) The description of the property.

(b) The date title vested in the United States.

(c) All exceptions, reservations, conditions and restrictions relating to the title acquired.

(d) Detailed information concerning any action, thing or circumstance that occurred from the date of the acquisition of the property by the United States to the date of the report which in any way affected, or may have affected, the right, title, and interest of the United States in and to the real property (together with copies of such legal comments or opinions as may be contained in the file concerning the manner in which and the extent to which such right, title or interest may have been affected). In the absence of any such action, thing or circumstance, a statement to that effect shall be made a part of the report.

(e) The status of legislative civil and criminal jurisdiction over the land peculiar to the property by reason of it being Government-owned land. If the United States does not hold such legislative jurisdiction, the report on government title should so state.

(f) All exceptions, reservations, conditions and restrictions imposed by higher authority on the property at time of disposal. No additions or substantive changes to these will be made without prior approval from HQDA (DAEN-REM), WASH, DC 20314.

(g) If the property, or any portion of it, has been listed in the National Register of Historic Places, or has been nominated for listing or nomination, this should be included in the SF 118. Specific fixtures and related personal property having possible historic or artistic value should also be included. (See § 644.317 for information on historic preservation.)

§ 644.357 Outgrant instruments, appraisals and muniments of title.

There shall be transmitted with the SF 118 copies of outgrants involving the property reported, all conveyances, encumbrances and other instruments affecting the use and operation of the property, including deeds, mortgages, and agreements covering and licenses to use any patents, processes, techniques, or inventions. Where there is more than one like instrument as, for example, agricultural leases, it may be preferable to list them, locate them on the land use map, and furnish a sample copy. FPMR contemplates that muniments of title will be transmitted with the report of excess.

The title report (§ 644.356 of this part) will state that HQDA (DAEN-REP) WASH DC 20314 is the custodian of title papers and has been requested by the DE to transmit applicable title papers direct to the GSA Regional Office. Accordingly, as soon as practicable after receipt of an information copy of the declaration of excess by the using service, and a disposal directive, the DE will assign a disposal report number and advise DAEN-REP to transmit the pertinent title papers directly to the appropriate GSA Regional Office, citing the disposal report number as a reference. Simultaneous action by DAEN-REP and the DE to assemble necessary reporting data is important to avoid delay of acceptance by GSA of the Report of Excess. If experience should demonstrate that such simultaneous preparation and transmittal of data is not practical in saving time and effort, the DE will arrange in advance for transmittal of the necessary title data from DAEN-REP for incorporation in the Report of Excess before transmittal by the DE to the GSA Regional Office.

§ 644.358 Deposit of proceeds from disposal of family housing in the family housing management account.

(a) Title 42 U.S.C. 1594a-1(b) provides that the proceeds from the disposition of Department of Defense Housing, including related land and improvements, shall be transferred to the DOD Family Housing Management Account for the purpose of debt service. Arrangements have been made between DOD and GSA to implement this law and apply it to excess MCA housing as well as to housing encumbered by mortgage debts such as Capehart and Wherry Housing projects. (See § 644.322(b).)

(b) The agreement with GSA calls for separate identification and description in the Report of Excess (SF 118) of those improvements which are considered family housing within the purview of the law and a request in the report that proceeds from disposal be transferred to the DOD Family Housing Management Account. (The actual transfer of funds will be accomplished at Washington level.)

(c) Where the Report of Excess includes both housing and property not related to housing, separate schedules (SF 118 a and b) will be prepared to cover the housing involved, including related land and other improvements. The housing schedules should be annotated and arranged categorically to show:

(1) Number of structures by type of authorization, i.e. Wherry Act, Capehart Act, Military Construction Authorization Act, Lanham Act, etc.

(2) The number of family units.

(3) Those improvements and collateral facilities which are considered "related" to the housing.

(4) Where reasonably apparent, a description of the acreage or boundaries of the family housing areas as distinguished from other excess lands.

(5) A statement as follows: "Net proceeds from the sale of this family housing, including related lands and improvements, shall be remitted to DOD for deposit to Family Housing Management Account, Defense 97X0700."

§ 644.359 Supplemental information.

The DE will cooperate to the greatest extent practicable in furnishing further information and assistance requested by GSA Regional Offices. However, requests for engineering surveys should be carefully monitored in the interest of economy. When such requests appear excessive or other requests for services appear to require unnecessary expenditures, DAEN-REM will be fully informed, with recommendations, in order that the matter may be resolved through appropriate coordination with the GSA central office.

§ 644.360 Reports submitted for screening.

Excess leaseholds and buildings and improvements to be disposed of separately from the land which, pursuant to § 644.350, must be reported to GSA for screening purposes only, will be reported immediately when the property is determined to be excess to the particular military department having jurisdiction. The report will contain the statement: "This property is reported for screening with civilian agencies by

GSA prior to its disposal by the Corps of Engineers. The property is being screened within DOD and when the screening has been completed, appropriate certification will be submitted to GSA." Screening against defense requirements, pursuant to §§ 644.333 through 644.339, will then be completed and GSA notified of the result. If such screening results in the development of a requirement by one of the other military services, the Report of Excess will be withdrawn and the transfer of the property to the requesting military service effected. This specialized procedure for this type of property is adopted to allow screening for defense requirements by the Corps of Engineers to be accomplished simultaneously with the screening of civilian agencies by GSA. Where circumstances require that this type of property be screened within a limited period of time, the period should be specified and an explanation set forth on the face of the Report of Excess, as, for example: "Buildings are in the way of planned new construction and must be removed or demolished not later than (date). Accordingly, advice must be received on or before (date) as to whether a requirement exists for the property, or whether it is to be transferred or assigned to another Federal agency for removal within the time specified." If such advice is not received by the time specified, the property should be disposed of without further delay and GSA notified of the action.

§ 644.361 Distribution of report of excess.

Copies of the final Report of Excess (SF 118) will be distributed simultaneously as follows:

(a) Complete copies to: (1) Regional Office, GSA—original and four copies.

(2) District Engineer—one copy.

(b) Division Engineer—one copy of the cover sheet (SF 118), and transmittal letter.

(c) A complete copy, except Schedule C (SF 118c), to HQDA (DAEN-REP) WASH DC 20314 and one copy of the cover sheet to HQDA (DAEN-REM) WASH DC 20314.

(d) Where family housing is involved, one copy of the cover sheet and the pertinent schedules A and B to the Deputy Assistant Secretary of Defense (Installations and Housing), Washington, DC 20301.

§ 644.362 Notice of receipt.

GSA should promptly notify the holding agency of the date of acceptance of each Report of Excess (SF 118). The date GSA will assume the expense of cost and custody as provided in §§ 644.368 through 644.375, will be figured from this date.

§ 644.363 Withdrawals or corrections of reports of excess.

(a) Subject to the approval of GSA, and to such conditions as GSA considers appropriate, Reports of Excess may be withdrawn or corrected at any time prior to disposition of the property, by filing a corrected SF 118 with the regional office of GSA. Corrections and withdrawals will bear the same number as the report of excess to which they pertain, but will bear a letter suffix beginning with "A" for the first correction or withdrawal and continuing in alphabetical sequence for succeeding corrections or withdrawals. "Correction" will be conspicuously stamped on the face of the SF 118 for both withdrawals and corrections. Distribution of requests for withdrawal or correction will be the same as that made of the Report of Excess to which the withdrawal or correction pertains.

(b) Property which is reported to GSA for disposal will not be withdrawn without the prior approval of HQDA (DAEN-REM) WASH DC 20314, nor will return of the SF 118 be accepted without the approval of DAEN-REM. (See §§ 644.340 through 644.347, concerning prior approval of DOD for withdrawals from excess of real property having an estimated fair market value in excess of $50,000.)

§ 644.364 Supply of forms.

Standard forms 118, 118a, 118b, and 118c, are not available in normal Army Adjutant General supply channels. The forms should be procured from GSA.

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§§ 644.365—644.367 [Reserved]

CARE AND CUSTODY OF EXCESS AND SURPLUS PROPERTY

§ 644.368 Procedures and responsibilities for care, custody, accountability, and maintenance.

(a) *Department of the Army Military Property.* Care, custody, accountability, and maintenance of excess Army military real property will be as prescribed in AR 405-90.

(b) *Department of the Army Civil Works Property.* DEs will retain custody and accountability of all excess civil works real property under their jurisdiction until final disposition is effected.

(c) *Department of the Air Force Property.* Pursuant to AFR 87-4, the Department of the Air Force is responsible for care and custody of excess Air Force real property. However, upon request by the Air Force DEs may assume custody if no costs are involved, or where cost is involved if funds therefor are furnished upon request by the DE.

(d) *Department of Energy (DOE), National Aeronautics and Space Administration (NASA), and Other Federal Agencies.* Where the Corps of Engineers is acting as real estate agent for other Federal agencies, DEs, at the request of the agency, may assume care and custody of excess real property on a reimbursable basis.

§ 644.369 Guidelines for protection and maintenance of excess and surplus real property.

Detailed guidelines are provided in FPMR Subsection 101-47.4913.

(a) *Calculated Risk.* These guidelines, which are binding on holding agencies, embody the principle of calculated risk. In applying this principle, the anticipated losses and deteriorations, including pilferage and vandalism, in terms of realizable values are expected to be less than expenditures to minimize the risks. Normally, where property is of little value, only periodic surveillance is necessary and care and custody forces will not be maintained. However, where property, regardless of realizable value, is potentially an attractive nuisance to children and curiosity seekers, or is inherently dangerous, the public should be protected by guards stationed on the property or by other satisfactory means. Every effort should be made to minimize the cost of care, protection and maintenance consistent with these principles.

(b) *Improvements or Alterations.* FPMR Subsection 101-47.401-5, provides that improvements and alterations to excess and surplus real property may be considered, with the prior approval of GSA, where disposal cannot be made. However, it is not considered likely that a situation will arise in the Corps' disposal operations where such improvements or alterations can be justified. Repairs necessary for protection and maintenance of marketable property will not be undertaken except to prevent serious loss to the Government. Excess equipment or facilities should not be updated or improved. At predisposal conferences, or earlier where practicable, the DE, in coordination with GSA representatives, will furnish specific guidance to the using command as to the minimum acceptable GSA requirement for care and custody. The requirement for minimum maintenance does not extend to historic places. Historic places in excess or suplus status will be maintained in accordance with the letter and spirit of approved Department of the Army criteria for protection, preservation and maintenance of historic places.

§ 644.370 Transfer of custody to General Services Administration (GSA).

(a) Custody of an excess installation reported to the GSA for disposal will continue to be held until GSA transfers to its purchaser or other designee. All expenses pertaining to care, custody and maintenance will be borne by the holding department or agency, except that such expense for property reported to GSA for disposal and not disposed of within 12 months from the date the formal report of excess was received by GSA, shall be assumed by GSA as of the first day of the succeeding quarter of the fiscal year. GSA will give notice of the receipt of the report of excess and will, within 15 days, furnish advice on the acceptability of the report. (See FPMR as amended, Subsection 101-47.202-10.) Any request made to the disposal agency to defer disposal action, or failure to submit an acceptable report, will extend the obligation of the department with respect to expenses for care and custody caused by such deferment. In the event the department is not relieved of custody within the period for which it is obligated to stand the expense thereof, the retention of care and custody thereafter will be reimbursed by the disposal agency. Because of the magnitude of custodial expense for larger installations and the longer periods of time often consumed in effecting their disposal, it is imperative that reports of excess be made as promptly as possible in order that the 12-month period may commence and terminate as soon as possible and the department's expense minimized.

(b) The DE will maintain close liaison with GSA with a view to obtaining prompt transfer of custody and accountability from the department to that agency, and will coordinate transfers between the using service and GSA. However, DEs will not take over custody of an installation or coordinate the transfer of custody until a statement of clearance or a statement that such clearance is not necessary because of the use of the installation has been furnished. Under GSA procedures, the department generally retains the responsibility for care, custody, and accountability of its excess facilities until final disposition is made by GSA. Until that time, the property is to be carried on the real property inventory of the department.

§ 644.371 Contracting for care and custody.

Care and custody of excess and surplus installations should be performed by contract whenever it is legally possible and more economical to do so. Due to the temporary nature of such services and the extreme variations in kind and fluctuations in quality of such services required from time to time, contracting for custodial service will often prove to be more economical and efficient. In contracting for such services which include watchman, patrol and protective services, attention is invited to the prohibition against hiring detective agencies pursuant to the following Act of Congress: "* * * An individual employed by the Pinkerton Detective Agency, or similar organization, may not be employed by the Government of the United States or the Government of the District of Columbia." (5 U.S.C. 3108). This has been construed to apply to employees of organizations which provide services of a detective agency, but not to organizations which are organizations to render watchman, patrol or protective services and do not include detective services as one of their functions (26 Comp. Gen. 303). Custodial and protective services referred to herein are the type ordinarily procured by contract by GSA and other Government agencies charged with the responsibility for care and handling of excess and surplus real property pending its disposal in accordance with the FPMR.

§ 644.372 Care and custody through interim use.

(a) *General.* Upon receipt of initial information that real property is excess, the DE should promptly initiate planning for interim productive use. Interim use should be planned to save care and custody expense but must not interfere with, delay, or retard transfer of the property to another Federal agency or its disposal otherwise. Any permit or lease must have the prior approval of GSA, and shall be for a period not exceeding one year and shall be revocable on 30 days' notice (FPMR Sections 101-47.203-9 and 101-47.312).

(b) *Permits to other Federal Agencies.* Interested Federal agencies will be afforded a priority in the interim use of excess and surplus real property. The permit will require the Federal agency to perform care and custody and perform routine maintenance. 41 CFR 101-47.203-8, provides for temporary assignment, conditional transfers, and rental or user charges for use of excess property by Federal agencies.

(c) *Leases for Non-Federal Use.* Leases of excess and surplus property are made under authority of the Federal Property and Administrative Services Act of 1949, as amended and AR 405-80. Such leases are subject to the Economy Act (40 U.S.C. 303b), and must be for a money consideration only. The lessee can and should, however, be made responsible for ordinary maintenance and restoration as required by standard Corps of Engineers lease forms. Where a portion of an excess or surplus installation is leased, it may be advantageous to enter into an agreement with the lessee for care and custody of the remainder. The agreement cannot provide for a reduction of rental for the portion leased. The Economy Act may not apply in some cases where industrial plants are determined excess subject to the National Security Clause or similar recapture conditions. Such cases should be coordinated with DAEN-REM on an individual basis.

§§ 644.373—644.375 [Reserved]

Return of Public Domain Lands and Lands Obtained on a Temporary Basis From Another Federal Agency

§ 644.376 Procedure for disposal of public domain land.

(a) Lands withdrawn or reserved from the public domain, together with Government-owned improvements, which have been determined to be excess to the department, after screening with other DOD agencies and the U.S. Coast Guard in accordance with §§ 644.333 through 644.339, will be processed for disposal in accordance with 43 CFR 2370-2374 and § 644.381 hereof. The DE will file a Notice of Intention to Relinquish as provided by 43 CFR 2372.1. The notice will be filed in the Bureau of Land Management (BLM) Land Office having jurisdiction.

Excess buildings and improvements on the property should be left in place and no disposal action taken thereon pending further instructions from BLM, unless it is determined that they should be abandoned in accordance with the procedures set forth in §§ 644.472 through 644.500. A copy of the Notice of Intention to Relinquish submitted to the appropriate BLM Land Office will be transmitted to HQDA (DAEN-REM) Washington, D.C. 20314 and to the appropriate GSA regional office.

(b) If any restoration, or other work, is proposed to be performed on the land, the matter will be forwarded to DAEN-REM for prior approval. Where the DE recommends disposition of the land by GSA as excess property rather than return to the public domain, no restoration of the property will be proposed (see 43 CFR 2372.1). Generally, lands which are unimproved, or contain only minor improvements, will be recommended for return to the public domain. Exception to this procedure should be made where development surrounding, or in the vicinity of the land, has changed its character, although the land itself has not been improved. Another exception would be the situation described in § 644.350(d). Generally lands which are extensively improved will be recommended to BLM for disposal as excess property.

(c) If the authorized officer of BLM determines, pursuant to 43 CFR 2372.3, that the conditions prescribed by that regulation have been met and that the land is suitable for return to the public domain, he will notify the DE, as the representative of the holding agency, that the Department of the Interior accepts accountability and responsibility for the property. A copy of this notification will be furnished to HQDA (DAEN-REP) Washington, D.C. 20314.

(d) If the authorized officer of BLM determines, pursuant to 43 CFR 2374.1, that the land is not suitable for return to the public domain because it is substantially changed in character, and GSA concurs in this determination, he will notify the DE to report the land and improvements, with or without minerals, to GSA as excess property. Upon receipt of this notice, the DE will advise DAEN-REP and report the property to GSA on SF 118, Report of Excess Real Property, including the information on claims and encumbrances furnished by BLM under 43 CFR 2374.1 (c). The holding agency has the same responsibility for care, custody, and accountability of excess public domain as for other property reported to GSA for disposal.

§ 644.377 Formal revocation of public land withdrawals and reservations.

When the authorized officer of BLM determines that the land is suitable for return to the public domain, the BLM Land Office will transmit to the DE a draft of public land order (PLO) designed to formally revoke the order or reservation which withdrew or reserved the land. The DE will review the draft PLO for accuracy and return it unsigned. The draft PLO will be transmitted through BLM channels to DAEN-REM for signature of the Secretary of the Army or Air Force and return to the Washington office of BLM.

§ 644.378 Cancellation of permits.

(a) Land obtained by permit, or some other form of instrument, from another Federal agency on a temporary basis which has not been substantially improved while being utilized by the Department, when determined to be excess in accordance with the procedure set forth in §§ 644.326 through 644.332, will be returned to the Federal agency from which it was obtained.

(b) When it is determined by the DE that land obtained by permit, or other form of instrument, from another Federal agency on a temporary basis has been substantially improved while being utilized by the Department, the DE will request DAEN-REM to determine whether the land is excess, or is expected to become excess, to the requirements of the agency from which it was obtained.

(1) If the agency from which the land was obtained advises that the land is excess, or is expected to become excess, to its requirements, the improvements will be reported to GSA on SF 118 in accordance with the procedure described in §§ 644.348 through 644.347, with a statement that the agency from which the land was obtained has advised that the land is excess, or is expected to become excess to its requirements, and that the agency will be or has been requested to reassume administrative control over the land. Coincident with the report of excess, action will be initiated to return the land to the agency from which it was obtained.

(2) If the agency from which the land was obtained advises that the land is not excess, and is not expected to become excess to its requirements, improvements constructed thereon while the property was being utilized by the Department will be disposed of in accordance with the provisions of § 644.381. Where the improvements are substantial, and cannot be utilized effectively by the agency from which the land was obtained, and it appears that the best interests of the Government may not be served by disposal of the improvements for removal from the site, a report, with recommendations, should be forwarded to DAEN-REM for a determination whether the permit and improvements should be reported to GSA for disposal, or whether other action would be appropriate.

(c) The Chief of Engineers, or his duly authorized representatives, will execute and deliver necessary papers effecting the relinquishment of permits and the transfer of real property to other Federal agencies when the installations to which such real property or permits pertain have been determined to be excess. However, where permits were obtained at local level, DEs will effect relinquishment in the same manner. Unless otherwise instructed, no action will be taken by the DE to restore or return the lands pertaining to an industrial installation to the agency which granted the permit. DEs will, however, submit the report required in § 644.379.

(d) Where an installation embraces lands acquired in fee by a military department and lands acquired for temporary use from other departments or agencies, and if return of the latter type of lands to the department or agency which granted the permit would destroy the integrity of the installation or affect its ultimate disposal as a unit, a report will be made to DAEN-REM with recommendations that they will provide disposition instructions.

§ 644.379 Procedure for cancellation of permits.

(a) When permitted land is excess and the permit is to be executed, the DE will submit the following information with his recommendations to DAEN-REM:

(1) Description and location of the property;

(2) Date use was acquired;

(3) Department or agency from which acquired;

(4) Manner of acquisition; that is, by permit or other means, with copy of document;

(5) ENG Form 1440-R, Cost of Restoration (Engineer Estimate and Appraisal), which includes a statement of cost and value of improvements or structures placed on the lands by the department;

(6) Statement of restoration work performed by the department if any;

(7) Statement of local representative of owning agency as to whether restoration will be required, or, where restoration work has been performed, whether such restoration is satisfactory; and

(8) Statement that no clearance of explosives or other harmful elements is necessary because of the manner in which the land was used, or, if otherwise, statement of clearance action taken or necessary.

(b) Upon receipt of the foregoing information, the Chief of Engineers will effect relinquishment of the land by letter. Where the DE has authority to relinquish the land as outlined in § 644.378(c), he will effect relinquishment by letter addressed to the permittor, with a copy to DAEN-REM.

§ 644.380 Restoration of lands made available by other Government agencies.

(a) *Requirement.* Where the Department retransfers real property, the use of which has been obtained from other Federal agencies (including withdrawals from the public domain recommended for return to the public domain) by means of use permits, public land orders, or other methods, the property should be restored to a condition as good as that which existed at the time the department took possession, damages by the elements or by circumstances over which the Department has no control excepted, unless the agency from which the property was obtained expressly waives restoration. Restoration of public domain land will not be initiated until the determination is made that the land is suitable for return to the public domain. Public domain land that is to be reported excess to GSA will not be restored. The procedure enunciated in §§ 644.516 through 644.539 relative to neutralization of unexploded bombs or artillery projectiles located on leased premises applies with equal force to Government-owned lands returned to other Federal agencies and to public domain land that is to be reported as excess for disposal by GSA.

(b) *Authority.* The report of the Senate Appropriations Committee on the DOD Appropriation Bill, 1966 (Senate Report 625, 89th Congress, dated 18 August 1965), contained the following language:

> Such funds as may be required may be used to restore lands under jurisdiction of other Government agencies, damaged while being used for military training purposes under agreement with such agencies.

The Comptroller General considers the foregoing to be a clear expression of Congressional intent, and that authority exists for the Department of the Army to restore (or make payment in lieu thereof) lands of other Federal agencies which have been damaged by the Army while being used under agreement.

(c) *Determination of Restoration Costs.* ENG Form 1440-R, Cost of Restoration, appropriately modified, will be used for the preparation of an estimate of cost of restoration, or salvage or market value, for the purpose of determining the cost of restoration.

(d) *Payments for, or in Lieu of Restoration*—(1) *Work Performed by the Department of the Army.* If the work is performed by the Department, payment will be made from funds available to the office performing the work.

(2) *Work Performed by Controlling Agency.* If the work has been performed by the agency having administrative control over the property, pursuant to agreement with the Depart-

ment, reimbursement to that agency may be made by properly supported SF 1080, Voucher for Transfer Between Appropriations and/or Funds, from funds available to the DE.

(3) *Payment in Lieu of Restoration.* If the work has not been performed by either agency and a payment is desired in lieu of restoration, the payment is, in effect, an advance of funds. As such, the advance of funds will be accomplished in OCE, based on submission by the controlling agency of SF 1080 properly supported.

§ 644.381 Disposal of buildings and other improvements.

Where improvements have a net salvage value and are not to be reported to GSA for disposal with the land, the permitting agency, or Department of the Interior in the case of public domain land, will be required to reimburse the Army for their net salvage value, or the buildings or improvements will be disposed of in accordance with §§ 644.472 through 644.500.

§§ 644.382—644.384 [Reserved]

PREDISPOSAL ACTION

§ 644.385 Record of excess classification.

The DE will establish a record on ENG Form 836A, Real Property Disposal Report, of the excess classification of each Army property and each Air Force property for which a preliminary or final real estate directive has been issued.

§ 644.386 Utilization for other needs.

The DE will determine the feasibility of utilizing each installation classified as excess to fulfill current directives for acquisition of real estate or known or foreseen potential needs of the Army or Air Force, which may have been generated since the screening process. If redistribution for this purpose is deemed advantageous, recommendations will be submitted to HQDA (DAEN-REM) WASH DC 20314 on the proposed action, indicating when excess status was determined and by which element of the Departments of the Army or Air Force.

§ 644.387 Suspension of acquisition action on installations proposed for disposal.

When a fee-owned installation is recommended for excess by the installation commander, or a preliminary or final real estate disposal directive is issued by the Air Force, any pending acquisition in connection with the installation will be suspended, unless the directive provides otherwise. A recommended plan for curtailment of uncompleted acquisition will be submitted to HQDA (DAEN-REA-L) WASH DC 20314. The plan will include the following information: Identification by tract numbers, names of owners, and area of each tract for which an option has been accepted or a declaration of taking filed, but as to which it is considered practicable and economical to obtain cancellation of the option or a stipulation for dismissal of the condemnation proceeding and revestment of title. Specific information as to the extent and nature of demolition of improvements, new construction, or other damages or changes made by the Government to the premises, and the probable cost of restoration in case of such cancellation or stipulation, will be included. Pertinent public relations aspects should also be covered. Generally, tracts on which a declaration of taking has been filed will not be returned to the owners by stipulation for amendment or dismissal of the condemnation proceedings. Exceptions to this may be recommended when shown to be in the best of interest of the United States.

§ 644.388 Army military—screening, clearance, preliminary report of excess, except where an E.O. 11954 survey has been made.

Upon receipt of a copy of the installation commander's recommendation of excess, the DE will take the following actions:

(a) Immediately notify DAEN-REM by teletype, furnishing a brief statement of the real estate included in the recommendation.

(b) Promptly screen the property against Army and other defense requirements if required by and in accordance with §§ 644.333 through

644.339, and advise DAEN-REM of the results.

(c) As soon as the screening message is dispatched under § 644.388(b), or immediately upon receipt of a disposal directive from DAEN-REM when screening is not required by §§ 644.333 through 644.339, DEs will prepare and forward:

(1) SF 118, Report of Excess Real Property and other documentation required in reporting the excess property to GSA.

(2) ENG Form 2187-R, Disposal Report, for clearance with DOD and the Armed Services Committees (ASC) of Congress where required in accordance with §§ 644.340 through 644.347. This should be forwarded to DAEN-REZ-L within three weeks of dispatch of the screening message, or receipt of the disposal directive. This schedule will allow the Chief of Engineers to process the disposal assembly through the DA and DOD secretariats and to obtain necessary clearances from the ASC. DAEN-REM will furnish the DE copies of the DOD approval and the report to the ASC. This office will also furnish copies of the ASC report to the Washington and regional offices of GSA, to permit screening with other Government agencies.

(d) DOD approval of the disposal (property having estimated value in excess of $100,000) signifies the property is excess to Defense requirements. Upon receipt of this approval, the DE will forward a preliminary Report of Excess to GSA by transmitting necessary copies of the completed SF 118, with attachments, carefully identified as preliminary. Where screening is negative for property having an estimated value of $100,000 or less, the property is considered excess to Defense requirements and a final report of excess should be forwarded promptly to GSA.

§ 644.389 Army military—modified predisposal procedures where E.O. 11954 surveys have been made.

(a) DEs will be advised of military installations to be surveyed under E.O. 11954 by a DOD or GSA survey team.

(b) If property is to be declared excess as a result of a decision by the Department of the Army, appropriate commanders and DEs will be advised. The major commander will be requested to submit a Report of Excess pursuant to AR 405-90 to HQDA (DAEN-REM) Washington, DC 20314 within 15 days. DEs will be furnished a copy of the report.

(c) Upon receipt of advice that property will be excessed, the DE, in coordination with the installation commander concerned, will commence preparation of ENG Form 2187-R, if required, for submission to DAEN-REZ-L.

(d) When the Report of Excess is approved, DAEN-REM will advise the DE and will request that screening be initiated. The approved report will be prompty referred through channels to the DE for further appropriate action.

(e) The ENG Form 2187-R will be forwarded to DAEN-REM not later than 15 days after receipt of the approved Report of Excess.

(f) As soon as the areas to be excessed are clearly defined, action will be initiated to assemble all necessary data so that the final SF 118 may be submitted to GSA within 30 days after necessary Congressional clearance is obtained under 10 U.S.C. 2662.

(g) When the estimated value of the property does not exceed $100,000 and preparation of an ENG Form 2187-R is not required, the DE, upon being notified of the approval of the Report of Excess, will notify DAEN-REM of the date the SF 118 will be submitted to GSA.

§ 644.390 Executive Order 11954 surveys of civil works properties.

Procedures to be followed by DEs when civil works properties are surveyed by GSA under E.O. 11954 are contained in Chapter 8 of EP 405-1-2.

§ 644.391 Predisposal conference.

(a) Where a substantial Army installation, or portion thereof, is involved, the DE will convene a predisposal conference with representatives of the using command, GSA, and other interested parties. Where an Air Force installation is involved, the Major Air Command will take the initiative in convening the conference. In any cases involving flying facilities, Federal

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Aviation Administration representatives will be invited. The agenda of the predisposal conference should provide for:

(1) Determinations on maintenance guidelines based on probable future uses of the property with emphasis on agreements concerning responsibility for assumption of care and custody, in accordance with AR 405-90, AFR 87-4, and §§ 644.368 through 644.375.

(2) Review of the SF 118 to assure its acceptability to GSA.

(3) Review with GSA, when appropriate, of the advisability of transferring custody and maintenance responsibilities to GSA at an early date.

(4) Planning for and, to the extent possible, making definite determinations on interim utilization pending disposal by GSA.

(b) It is of utmost importance that excess installations be put to productive use as military operations are phased out. This will do much to lessen the impact of the installation's closing on the economy of the local community. For this purpose, installations, in many cases, will be reported to GSA prior to phase out of military operations. In these cases, the DE has responsibility to insure, to the extent practicable, that other productive use is phased in as military operations are phased out. This can be accomplished only by careful planning and continuous coordination by the DE with using command and GSA. The using command will plan and execute the military phase out. However, the DE will assure that the Report of Excess to GSA specifically identifies and excludes the real and personal property to be retained by the military department. This information is required by GSA for disposal purposes.

(c) A report on the predisposal conference will be forwarded to DAEN-REM. Any difficulties indicated by GSA will be summarized in the report, along with any other problems encountered or foreseen.

(d) When requested, and on an individual project basis, the DE will prepare a real estate disposal study concerning the transfer of custody and maintenance responsibilities to GSA prior to final disposal. This study will be developed in conjunction with appropriate using command and GSA representatives. Its purpose will be to determine whether the transfer of the excess property to GSA would be more economical and in the best interest of the Government. Important benefits to DOD agencies would be reduction in expenditures and personnel of the military departments for such functions. Copies of the study will be furnished the using command concerned for timely review and recommendations.

§ 644.392 Air Force—preliminary report of excess.

The DAF will issue a preliminary real estate disposal directive when a disposal project is forwarded to the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics) for clearance. (Air Force screens its own properties for other defense requirements and clears the disposal with DOD and the Armed Services Committees of the Congress.) When the preliminary real estate disposal directive is received, the DE, unless directed otherwise, will proceed to perform all necessary actions in coordination with the installation commander concerned, for submission of a preliminary Report of Excess to GSA.

§ 644.393 Final report of excess to GSA.

Where a preliminary Report of Excess is made to GSA, the DE will promptly finalize the report upon receipt to the final Air Force disposal directive. In all cases where a disposal is reported to the Armed Services Committee, the DE will furnish HQDA (DAEN-REM) advice when the final report is made to GSA. Where the report is finalized by statement confirming a preliminary report as final, copies of the preliminary report and confirming statement should be distributed in accordance with §§ 644.348 through 644.367. Distribution of preliminary Reports of Excess, except to GSA, will not be made in other cases.

§ 644.394 Protection of disposal information.

To prevent premature disclosure to the public, information on and plans for disposal of all or a portion of an installation should be protected (AR 340-16), until such time as the property is determined excess to Army or Air Force requirements. (The Air Force preliminary real estate disposal directive is not issued until a determination has been made that the property is excess to Air Force requirements.) After determinations of excess are made, it is desirable that information on the availability of the property for disposal be widely disseminated. "FOR OFFICIAL USE ONLY" marking on plans and correspondence pertaining to the excess action may be cancelled by any recipient or holder. Where the classification "CONFIDENTIAL" or higher has been used, documents must be declassified in accordance with AR 380-5.

§ 644.395 Coordination on disposal problems.

If any major change or problem requires a significant revision in the time schedule for disposal, prompt action will be taken to advise offices concerned. HQDA (DAEN-REM) should be promptly informed of any problem adversely affecting a specific disposal project or the overall program for disposal or property.

§ 644.396 Assignment of personnel to administer.

To extent appropriate according to the circumstances and nature of the property, the DE will assign a responsible representative to each installation, or group of installations, to act under his staff supervision in performance of the following functions:

(a) Monitoring and expediting the actions described in §§ 644.385 through 644.399 and maintaining close liaison with GSA on disposal problems and actions.

(b) Monitoring and expediting performance of such demolition, dismantling or other construction work as may be authorized.

(c) Administration, operation and maintenance of the excess installation until final disposal, making every effort by consolidation of activities and otherwise to reduce the costs consistent with economic management of the facilities.

(d) Coordination of ultimate transfer of assumed custodial responsibility to other agencies or persons as directed.

§§ 644.397—644.399 [Reserved]

DISPOSAL OF FEE-OWNED REAL PROPERTY AND EASEMENT INTERESTS

§ 644.400 Authorities—general.

(a) *Statutory Authorities.* Power to dispose of real estate belonging to the United States is vested in Congress (paragraph 2, Section 3, Article IV, Constitution of the United States), and no real estate of the Department will be sold or otherwise disposed of without authority of Congress. By the Federal Property and Administrative Services Act of 1949 (Federal Property Act), (Pub. L. 152, 81st Congress; 63 Stat. 377) as amended, (40 U.S.C. 471 et seq.), Congress provided authority for utilization of excess property and the disposal of surplus Federal property, and established the General Services Administration (GSA) to administer the provisions of that Act. All excess and surplus Federal real estate and real property components will be disposed of under authority of the Federal Property Act, as amended, unless other statutory authority for such disposal is specifically withheld under the provisions of the Act or enacted subsequent thereto. In connection with disposals made under statutory authority other than the Federal Property Act, attention should be given to the purposes of the legislation and insofar as practicable, disposal of property should be in accordance with the provisions of the Act and the regulations issued thereunder, in order that the greatest overall efficiency and economy be effected.

(b) *Rules and Regulations*—(1) *Issued by the GSA.* Rules and regulations issued by the GSA to effectuate its authority in respect to disposal of real estate and real property components are contained in FPMR, Section 101-47, as amended, including disposition of timber, embedded sand, gravel and stone, buildings and other structures, and leaseholds and other rights to use or occupy real estate. The DE will be governed by these rules and regulations. GSA also issues, from time to time, special delegations of authority to the Department of Defense with power of redelegation.

(2) *Issued by the Departments.* Policies and procedures of the departments with respect to the control, management, maintenance, and disposition of real estate and real property components located within the continental United States and its territories and possessions, placed in excess status or to be placed in excess status are contained in AR 405-90, AFR 87-4, and AR 405-5/AFR 87-15, except Army civil works property which is governed by EP 405-1-2.

(c) *Authorities Delegated to the Department of Defense.* Under the publications and special delegations issued by GSA, the Department of Defense has been designated disposal agency categories enumerated in § 644.314.

(d) *Authorities Delegated to the Army and Air Force.* Department of Defense Directive 4165.6, among other things, redelegates to the Secretaries of the Army, Navy and Air Force, and to such individuals as they may designate for the purpose of administering real estate actions within their respective departments, the authorities which were then, or may hereafter be, assigned and delegated to, or vested in the Secretary of Defense by:

(1) Sections 401 and 402 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 511 and 512) and regulations of the GSA promulgated thereunder.

(2) The Administrator of General Services, pursuant to Section 203 (a), (b) and (c) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 484).

(3) Other specific delegations from the Administrator of General Services.

(e) *Authorities (Special).* In addition to the general authority cited in paragraph (d)(2) of this section, the Department derives authority from a number of special purpose statutes to transfer real property to other Federal agencies and to dispose of real property for special purposes, or to special classes or in a specific manner to achieve a specific objective. Some of these acts are utilized in conjunction with regulations of GSA and some are exercised independently thereof according to the nature of the particular law. These laws are described in subsequent sections of EP 405-1-2.

§ 644.401 Transfers—general.

Résumés of the principal legislative acts authorizing transfer of Army and Air Force real property to other Federal departments are contained in §§ 644.402 through 644.406. The authorities in these acts are exercised independently of GSA regulations. Transfers under these authorities are made without reimbursement. Real property can also be transferred under the Federal Property Act within the scope of disposal authority delegated by GSA. Transfers under the Federal Property Act are subject to reimbursement as prescribed by FPMR, section 101-47.203-7. Property reported to GSA for disposal will be transferred only at the direction of GSA. Excess property excepted from reporting may be transferred by the DE under GSA regulations. Transfers to the Department of the Interior of surplus lands chiefly valuable for migratory bird management are subject to GSA regulations but are made without reimbursement (§ 644.429).

§ 644.402 Transfers among the armed services.

10 U.S.C. 2571(a) authorizes the interchange without reimbursement of military stores, supplies, and equipment of every character, including real estate owned by the Government, between the Army, Navy, Air Force and Coast Guard upon request by the head of one service and with the approval of the head of the other service.

§ 644.403 Transfers to Tennessee Valley Authority.

10 U.S.C. 831f(b) authorizes the President of the United States to provide for the transfer to the Tennessee Valley Authority of the use, possession and control of such real or personal property of the United States as he may from time to time deem necessary and proper for its purposes. This authority is applicable to property under the jurisdiction or control of the Secretaries of the Army and the Air

Force. The authority vested in the President by this law has been delegated to the Office of Management and Budget by Executive Order No. 10530 dated 11 May 1954, as amended (see footnote to 3 U.S.C. 301).

§ 644.404 Transfers to Federal Prison Industries, Inc.

18 U.S.C. 4122 authorizes any department or agency of the Department of Defense to transfer without exchange of funds, to Federal Prison Industries, Inc., any property or equipment suitable for use in performing the functions and duties covered by agreement entered into under subsection (d) of this Act. The provisions include the industrial employment and training of prisoners convicted by general courts-martial and confined in any institution under the jurisdiction of any DOD agency or department.

§ 644.405 Transfers to Veterans Administration.

38 U.S.C. 5003 authorizes the Secretaries of the military departments to transfer, without reimbursement, to the Veterans Administration, facilities, supplies, equipment, or material necessary and proper for the authorized care of veterans. The word "facilities," as used in this Act, has been construed to include buildings and grounds.

§ 644.406 Transfers to Secretary of Transportation and the National Weather Service.

49 U.S.C. 1157 authorizes the Department of Defense to transfer, without charge, to the Secretary of Transportation, airport property and airway property, exclusive of meteorological facilities in territory outside the continental limits of the United States (including Alaska). Section (b) of this Act similarly authorizes transfer of meteorological facilities, without charge, to the National Weather Service.

§ 644.407 Transfers to District of Columbia.

40 U.S.C. 122 authorizes Federal and District authorities administering properties within the District of Columbia, owned by the United States or by the District, to transfer jurisdiction over parts or all of such property among or between themselves for purposes of administration and maintenance under such conditions as may be mutually agreed upon, provided that, prior to the consummation of any such transfer, the proposed transfer shall be recommended by the National Capital Planning Commission. All such transfers and agreements shall be reported to Congress by the District authorities concerned.

§ 644.408 Interchange of national forest and military and civil works lands.

16 U.S.C. 505a, 505b authorizes the Secretary of Agriculture, with respect to national forest lands, and the Secretary of a military department, with respect to lands under the control of the military department which lie within or adjacent to the exterior boundaries of a national forest, to interchange such lands, or parts thereof, without reimbursement or transfer of funds whenever they shall determine that such interchange will facilitate land management and provide maximum use thereof, for authorized purposes. This law further provides that no transfer thereunder shall become effective until 45 days after the submission to the Congress by the respective Secretaries of notice of intention to make the interchange. The law also provides, in effect, that lands so transferred shall thereafter be subject only to the laws applicable to the lands of which the transferred lands become a part. Lands under the administrative control of the Congress, both military and civil, and that of the Air Force are within the scope of this law.

§ 644.409 Procedures for Interchange of National Forest Lands.

(a) *General.* The interchange of national forest lands is accomplished in three steps: first, agreement must be reached between the two departments involved as to which lands will be interchanged; second, the two departments will jointly notify the Speaker of the House of Representatives and the President of the Senate, by letter, of the intention of the two departments to make the interchange agreed upon; third, upon the expiration of 45 days from the date of submission of the notice of intention (counting only days occurring during any regular or special session of the Congress) the two secretaries will execute jointly and cause to be published in the FEDERAL REGISTER an order transferring the respective lands of each department to the other.

(b) *Initiation of Requests for Interchange.* Requests for interchange of lands may be originated by either the military department involved or the Department of Agriculture. Those originated by the Department of the Army may result from land requirements generated by newly authorized civil works or military construction projects or from authorized expansion of existing projects or as a result of property utilization surveys. Department of the Air Force requirements may develop similarly. When a request originates with the Department of the Air Force requirements may develop similarly. When a request originates with the Department of Agriculture pertaining to a civil works project or a military installation, it will be analyzed and coordinated by the DE with local representatives of the Department of Agriculture and the using service, as appropriate, to determine the feasibility of and need for the acquisition of any forest land to improve administration of the Army project or installation and the availability of Army lands for transfer to the Department of Agriculture. When coordinated analysis indicates the propriety of an interchange, an interchange planning report will be developed by the DE, in coordination with interested local elements of the two departments and submitted to HQDA (DAEN-REM) WASH DC 20314, with appropriate recommendations.

(c) *Contents of Interchange Planning Report.* The planning report should include the following information:

(1) Location of the areas proposed for interchange, including the county or municipality, names of the forest, project or installation, and number of acres to be interchanged by each department.

(2) If the areas involved include public domain lands, the number and date of the Executive Order or Public Land Order by which withdrawn or established.

(3) If the areas include acquired lands:

(i) Approximate dates, methods and cost of acquisition of Department of the Army lands proposed for interchange.

(ii) Interest, restrictions and reservations currently outstanding, to which the lands were subject when acquired, together with such rights subsequently granted by the Government and presently in force.

(4) Any additional reservations, conditions or restrictions under which the interchange is to be made.

(5) A map, in triplicate, indicating by appropriate color scheme the lands of each department which are to be interchanged. The map should show the jurisdictional boundary, and, where appropriate, the contour elevations used as a basis for determining the extent of the interchange.

(6) An informal estimate of the current values of the areas to be interchanged.

(7) Information upon which to base a determination by the two Secretaries that the interchange will facilitate land management and provide maximum use thereof for authorized purposes.

(8) Any other information or data that might be helpful to representatives of the Department of the Army in answering pertinent questions that may be raised by the committees of Congress.

(9) A draft of order of interchange prepared, in sextuplicate, in coordination with representatives of the Forest Service for execution jointly by the two Secretaries.

(10) Recommendations of the District and Division Engineers.

(d) *Relinquishment and Assumption of Possession.* Upon notification by the Chief of Engineers that an order of interchange has been published, the DE will coordinate with local representatives of the Forest Service, and the using service if appropriate, the exchange of custody and accountability of the respective areas.

§ 644.410 Procedure for other transfers.

(a) *Applicability—Exceptions.* Sections 644.410 through 644.412 are applicable to all transfers of real and related personal property to other Federal agencies by the Army and Air Force except as provided above.

(b) *Authority to Execute*—(1) *Secretaries of the Army and Air Force.* Instruments effecting the transfer of fee-owned land (except fee-owned land that has been reported to GSA and is transferred at the direction of GSA) will be executed at Secretarial level. The Secretary of the Army, or his designee, will execute instruments transferring Air Force land to other Federal agencies.

(2) *Division and District Engineers* will execute instruments transferring real property and related personal property to other Federal agencies: (i) Which has been reported to GSA and which is transferred at the direction of GSA; (ii) leaseholds, easements, and other lesser interests in lands; and (iii) buildings, fixtures, and other improvements.

§ 644.411 Form of inter-agency transfer instrument.

(a) Inter-agency transfer instruments will be prepared by the Chief of Engineers in either memorandum or letter form. The instruments will be prepared for signature of the Secretary of the transferring department and will be addressed to the Secretary of head of the receiving department or agency. The instrument will provide, as a minimum, the following: citation of statutory authority for the transfer; statement as to whether the transfer is made with or without reimbursement; statement of the reimbursement amount, if applicable; statement as to whether the requirements of 10 U.S.C. 2662 have been met or that the transfer is not subject thereto; statement as to the acreage of land involved; and, by means of an inclosure, a description of the property being transferred. Based on the circumstances and nature of the property, other appropriate data outlined below will be included in the instrument.

(1) Effective date of transfer (where right-of-entry has been granted or custody transferred, this date will be used.)

(2) Restrictions, conditions, reservations and exceptions, as necessary.

(3) When, where, how and by whom transfer of physical possession and accountability for the property will be accomplished.

(4) Location and proposed disposition of title papers pertaining to the property.

(5) Description of the land and copy of map depicting the property and reflecting its relation to retained property, if any, and to encumbrances such as rights-of-way, easements, and leaseholds.

(6) Instructions concerning payment of rent where a lease is involved. The transfer will be conditioned upon assumption of all obligations incurred in connection with the leasehold, including obligations to restore the premises.

(7) Instructions concerning removal and site restoration where buildings or timber, or sand and gravel, or other separable property is involved.

(8) Statement of source of title and cost of acquisition where land is involved. Reservations and exceptions in and to the Government's title and easements and other rights in the property granted by the Government will be stated with particularity.

(9) List and description of buildings and improvements and cost of buildings and improvements not acquired with the land.

(10) A reference to excess or other directive making the property available for transfer when instrument is executed by District Engineer.

(11) Statement of responsibility and reimbursement for utility services.

(12) Reference to Report of Excess, Standard Form 118, where property has been reported to GSA.

(13) Other appropriate information.

(b) The DE will provide the data outlined in paragraph (a) of this section to HQDA (DAEN-REM) WASH DC 20314 for use in preparing transfers to be executed at the Secretariat level. The forwarding correspondence will contain sufficient information for a full and complete understanding of the proposed transfer action, including an appraisal when reimbursement is required, together with other appropriate comments and recommendations.

§ 644.412 Transfer of custody and accountability.

The DE will transfer custody and accountability or will coordinate the transfer, as appropriate. The DE will collect any reimbursement and obtain any releases required. Where a leasehold is involved, the DE will furnish the transferee a copy of the lease and advice of the last rental paid and when the next rent is due. Upon completion of the transfer, proper notice will be given to the General Accounting Office, the lessor, and the Finance Officer as to the responsibility of the transferee for future rental payments. This action will be initiated or completed promptly upon receipt of a copy of the executed instrument, and a conformed copy thereof will be furnished to HQDA (DAEN-REP) WASH DC 20314.

§ 644.413 Exchanges of fee-owned land and easement interests.

The statutes identified in §§ 644.414 through 644.417 authorize the exchange of Government-owned lands and interests therein for private lands and lands owned by States, other non-Federal agencies, and their instrumentalities. As a general rule, any exchange of lands should be restricted to lands of approximately equal value. Where the Government property proposed for exchange has a value substantially in excess of the private land to be acquired, the question of whether the transaction is truly an exchange arises. In drafting relocation contracts, care must be exercised to insure that there is legal authority for execution of the conveyance or easement proposed.

§ 644.414 MCA acts.

The annual military construction authorization acts usually contain general authority for the acquisition, "by donation, purchase, exchange of Government-owned lands, or otherwise," of lands and interests therein at specified installations or for specified military purposes. The annual acts must be examined to determine that specific authority exists to acquire land by exchange, unless a contemplated exchange falls within the scope of one of the special laws mentioned in §§ 644.415 through 644.419.

§ 644.415 Army military and Air Force lands—$50,000 limitation.

(a) 10 U.S.C. 2672 authorizes the Secretary of a military department to acquire land and interests in land, by gift, purchase, exchange of Government-owned land, or otherwise, that:

(1) The Secretary or his designee determines is needed in the interest of national defense, and

(2) Does not cost more than $50,000.

(b) 10 U.S.C. 2672a authorizes the Secretary of a military department to acquire any interest in land, including by exchange of Government-owned land, that:

(1) The Secretary or his designee determines is needed in the interest of national defense;

(2) Is required to maintain the operations integrity of a military installation; and

(3) Considerations of urgency do not permit the delay necessary to include the required acquisition in an annual Military Construction Authorization Act.

§ 644.416 Army civil works lands.

The Secretary of the Army is authorized to exchange lands acquired for river and harbor and flood control projects for privately-owned lands required for such purposes (33 U.S.C. 558b and 558b-1).

§ 644.417 For MCA family housing.

The Act of 1 September 1954, Pub. L. 765, 83rd Congress (68 Stat. 1119), as amended by Sec. 415 of Pub. L. 968, 84th Congress, Act of 3 August 1956 (70 Stat. 1018) authorizes the acquisition of real estate by donation, purchase, exchange of Government-owned lands, or otherwise, for "Military Construction-Army Family Housing at Military Installations and Facilities."

§ 644.418 Procedure for exchange.

(a) Each agreement for the exchange of real property should be formalized by written contract specifying the terms and conditions of the exchange, including, by reference to exhibits incorporated therein or otherwise, the form and terms of the conveyance of the title to the property to and from the Government. The agreement, in the case of relocation contracts, will be developed in accordance with ER 1180-1-1. Where an exchange of land or interests therein is considered desirable in the course of a condemnation proceeding, the agreement can be incorporated in a stipulation therein (§§ 644.111 through 644.121)

(b) Submission to the Chief of Engineers of draft of conveyance.

(1) Conveyance will usually be executed by the Secretary or head of the agency involved § 644.441. To avoid impinging on his discretionary powers, the execution of any contract or agreement involving an exchange of real property interests must be approved in advance, be deferred pending execution of the conveyance, or provide that the terms and conditions of any grant to be made pursuant to the contract will be subject to approval by the Secretary or agency head. It is considered preferable that the contract contain a draft of conveyance as an exhibit thereto and, where time will permit, be submitted to DAEN-REM for review prior to final execution of the contract in order to avoid possible difficulties arising from subsequent disagreement over terms acceptable to the signatory of the Government's conveyance.

(2) In submitting for final approval and execution the conveyance of the Government's interest in land pursuant to a contract for exchange, the following data should included to support the proposed action:

(i) Description and map of the property to be conveyed.

(ii) Statements as to how and when the Government acquired title to the property, the nature and extent of its interest therein, and a statement of any encumbrance to which the property is subject and the nature thereof, such as easements for road rights-of-way, utility lines, etc.

(iii) A sufficient number of drafts or the conveyance to permit distribution thereof to interested agencies and the grantee.

(iv) Two copies of the contract, option, stipulation in condemnation or other agreement which provides for the proposed conveyance, or, in lieu thereof, pertinent excerpts therefrom sufficient to clearly show the nature and extent of the Government's obligation to execute the conveyance.

(v) A citation of the statutory authority on which the execution of the conveyance is to be predicated.

(vi) Any additional information necessary to a proper understanding of the proposed transaction.

(vii) When the exchange agreement is other than a relocation contract, an appraisal report showing the relative fair values of the properties to be exchanged.

(viii) A copy of the conveyance to be made to the United States, or a statement by the Attorney General that an acceptable conveyance has been executed and delivered to the United States, and that an opinion of good title has been made or is not required by regulation to be made.

(ix) Recommendations of the Division and District Engineers.

§ 644.419 Public Law 87-852 easements.

Public Law 87-852, approved 23 October 1962 (76 Stat. 1129), authorizes executive agencies to grant easements on real property of the United States for rights-of-way or other purposes on terms and considerations deemed necessary to protect the interest of the United States, with or without monetary consideration, or other consideration, including any interest in real property. The Act also authorizes the relinquishment of legislative jurisdiction to the State.

§ 644.420 Disposal of property in which the military departments have a continuing interest under special acts of Congress.

General. Because of the continuing interest of the departments in the following properties and in view of the determinations under the Acts on which the disposals are premised, properties that can be conveyed under authorities discussed in §§ 644.421 through 644.424 are not considered surplus or excess within the meaning

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of these terms as defined in the Federal Property Act.

§ 644.421 Highway purposes.

Title 23 U.S.C. 317 provides that upon application of the Secretary of Transportation, land or materials may be transferred to a state for the construction or maintenance of a right-of-way for any highway adjacent to a Government installation. If, within a period of four months after such application by the Secretary of Transportation, the Secretary of the Department shall not have certified to the Secretary of Transportation that the proposed appropriation of such land or material is contrary to the public interest or inconsistent with the purpose for which such land or materials have been reserved, they may be appropriated and transferred to the state for such purposes. When the need for such land or material ceases to exist, they shall revert to the control of the department. This section applies only to projects constructed on a Federal-aid system, or under the provisions of Chapter 2 of Title 23 U.S.C. Usually applications for highway rights-of-way or the use of borrow material made under this Act by the Federal Highway Administration, Department of Transportation, on behalf of a particular state can be and are more simply satisfied by the issuance of a road easement or a license to take borrow material. This latter procedure is also desirable in that controls necessary to satisfy military requirements may be retained. Title 23 U.S.C. 107(d) directs Federal agencies to cooperate with the Secretary of Transportation in providing rights-of-way, including control of access, for the interstate highway system over lands and interests in lands owned by the United States.

§ 644.422 Authorized widening of a public highway, street, or alley.

40 U.S.C. 345c authorizes the conveyance, upon application, of such interest in real property as is determined will not be adverse to the interests of the United States, to the states or political subdivisions for authorized widening of a public highway, street, or alley. The conveyance may be made with or without consideration, and subject to terms and conditions deemed necessary to protect the interests of the United States. Excepted from this authority is the conveyance of any interest in real property that can be transferred under Title 23 of the United States Code (see § 644.421), and to public lands in the National Forest System.

§ 644.423 Airport development.

(a) *Authority.* 49 U.S.C. 1723 provides that

> (a) . . . whenever the Secretary of Transportation determines that use of any lands owned or controlled by the United States is reasonably necessary for carrying out a project for airport development under this subchapter, or for the operation of any public airport, including lands reasonably necessary to meet future development of an airport in accordance with the national airport system plan, he shall file with the head of the department or agency having control of the lands a request that the necessary property interests therein be conveyed to the public agency sponsoring the project in question or owning or controlling the airport. The property interest may consist of the title to, or any other interest in, land or any easement through or other interest in airspace. (b) Upon receipt of a request from the Secretary under this section, the head of the department or agency having control of the lands in question shall determine whether the requested conveyance is inconsistent with the needs of the department or agency, and shall notify the Secretary of his determination within a period of four months after receipt of the Secretary's request. If the department or agency head determines that the requested conveyance is not inconsistent with the needs of that department or agency, the department, or agency head is hereby authorized and directed, with the approval of the President and the Attorney General of the United States, and without any expense to the United States, to perform any acts and to execute any instruments necessary to make the conveyance requested. A conveyance may be made only on the condition that, at the option of the Secretary, the property interest conveyed shall revert to the United States in the event that the lands in question are not developed for airport purposes or used in a manner consistent with the terms of the conveyance. If only a part of the property interest conveyed is not developed for airport purposes, or used in a manner consistent with the terms of the conveyance, only that particular part shall

at the option of the Secretary, revert to the United States.

(b) *Approval.* The requirement for approval by the President was waived by Executive Order 12079 dated 18 September 1978. The Attorney General delegated his authority to approve to the Assistant Attorney General, Land and Natural Resources Division, by Section 0.67 of Title 28 of the Code of Federal Regulations (Order No. 468.71 of the Attorney General, October 22, 1971: 36 FR 20428). The instrument of conveyance must cite authority for the waiver and the delegation as shown in the suggested format of deed in EP 405-1-2.

(c) *Requirements for Conveyance Instrument.* Under authority delegated by the Secretary of Transportation to the Federal Aviation Administration (FAA), when the Administrator of the FAA requests a conveyance from a military department. the instrument of conveyance requires the following provisions as covenants running with the land, binding the grantee, its successors and assigns.

(1) That the grantee will use the property interest for airport purposes, and will develop that interest for airport purposes within one year after the date of this conveyance, except that if the property interest is necessary to meet future development of an airport in accordance with the National Airport System Plan the grantee will develop that interest for airport purposes on or before the period provided in the plan or within a period satisfactory to the Administrator and any interim use of that interest for other than airport purposes will be subject to such terms and conditions as the Administrator may prescribe.

(2) That the airport, and its appurtenant areas and its buildings and facilities, whether or not the land is conveyed, will be operated as a public airport on fair and reasonable terms, without discrimination on the basis of race, color, religion, age, sex, handicap or national origin, as to airport employment practices, and as to accommodations, services, facilities, and other public uses of the airport.

(3) That the grantee will not grant or permit any exclusive right forbidden by Section 308(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1349(a)) at the airport, or at any other airport now owned or controlled by it.

(4) That the grantee agrees that no person shall be excluded from any participation, be denied any benefits or be otherwise subjected to any discrimination, on the grounds of race, color, religion, age, sex, handicap or national origin.

(5) That the grantee agrees to comply with all requirements imposed by or pursuant to Part 21 of the Regulations of the Office of the Secretary of Transportation (49 CFR Part 21)—nondiscrimination in federally assisted programs of the Department of Transportation—effectuation of Title IV of the Civil Rights Act of 1964.

(6) That in furtherance of the policy of the FAA under this covenant, the grantee:

(i) Agrees that, unless authorized by the Administrator, it will not, either directly or indirectly, grant or permit any person, firm or corporation the exclusive right at the airport, or at any other airport now owned or controlled by it, to conduct any aeronautical activities, including, but not limited to, charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity;

(ii) Agrees that it will terminate any existing exclusive right to engage in the sale of gasoline or oil, or both, granted before 17 July 1962 at such an airport, at the earliest renewal, cancellation, or expiration date applicable to the agreement that established the exclusive right; and

(iii) Agrees that it will terminate forthwith any other exclusive right to conduct any aeronautical activity now existing at such an airport.

(7) That any later transfer of the property interest conveyed will be sub-

ject to the covenants and conditions in the instrument of conveyance.

(8) That, if the covenant to develop the property interest (or any part thereof) for airport purposes within one year after the date of this conveyance is breached, or if the property interest (or any part thereof) is not used in a manner consistent with the terms of the conveyance, the Administrator may give notice to the grantee requiring him to take specified action towards development within a fixed period. These notices may be issued repeatedly, and outstanding notices may be amended or supplemented. Upon expiration of a period so fixed without completion by the grantee of the required action, the Administrator may, on behalf of the United States, enter, and take title to, the property interest conveyed or the particular part of the interest to which the breach relates.

(9) That, if any covenant or condition in the instrument of conveyance, other than the covenant contained in paragraph (c)(7) of this section, is breached, the Administrator may, on behalf of the United States, immediately enter, and take title to, the property interest conveyed or, in his discretion, that part of that interest to which the breach relates.

(10) That a determination by the Administrator that one of the foregoing covenants has been breached is conclusive of the facts; and that, if the right of entry and possession of title stipulated in the foregoing covenants is exercised, the grantee will, upon demand of the Administrator, take any action (including prosecution of suit or executing of instruments) that may be necessary to evidence transfer to the United States of title to the property interest conveyed, or, in the Administrator's discretion, to that part of that interest to which the breach relates.

(d) *Procedure for Conveyance.* Upon receipt of a deed from the District Engineer, DAEN-REM will submit the deed to the appropriate Secretary for execution, and to the Assistant Attorney General, Land and Natural Resources Division, for approval, before returning it to the District Engineer for delivery to the grantee.

(1) The deed assembly submitted will contain, in triplicate:

(i) The request from the Administrator of FAA to the Secretary of the military department concerned;

(ii) The reply from the Secretary involved to the Administrator, making the property available;

(iii) The resolution by the appropriate governing body of the public agency sponsoring the project in question indicating authorization for acquisition by such agency and its concurrence with the terms and conditions of the conveyance.

(2) Transmittal correspondence shall also set forth:

(i) The type and condition of the property, including improvements acquired therewith or constructed since acquisition;

(ii) Whether there has been any change in the nature, quantity, etc., of the property requested by the agency from the date of its original request to the present. If so, details should be furnished together with an appropriate amendatory resolution (in triplicate) by the governing body of the sponsoring agency;

(iii) Expenses of transfer. In view of the provision in the Act that the conveyance will be made without any expense to the United States, if land surveys are required the transferee agency will be required to pay cost of making such surveys.

§ 644.424 Development of public port or industrial facilities.

(a) *Authority.* Section 108 of Pub. L. 86-645 approved 14 July 1960 (33 U.S.C. 578) authorizes the Secretary of the Army, after certain determinations are made, to convey land which is a part of a water resource development project to a state, political subdivision thereof, port district, port authority, or other body created by the State or through a compact between two or more States for the purpose of developing or encouraging the development of public port or industrial facilities.

(b) *Limitation.* Only lands within a navigation project will be made available for conveyance for these purposes.

(c) *Delegations, Rules, and Regulations.* Pursuant to rules and regulations published in the FEDERAL REGISTER 11 March 1961 (26 FR 2117-2118; 33 CFR 211.141-211.147),

(1) The Chief of Engineers or the Director of Civil Works has been delegated authority to determine:

(i) That the development of public port or industrial facilities on land within a project will be in the public interest;

(ii) That such development will not interfere with the operation and maintenance of the project;

(iii) That the disposition of the land for these purposes under this Act will serve the objectives of the project;

(iv) If two or more agencies file applications for the same land, which agency's intended use of the land will best promote the purpose for which the project was authorized; and

(v) The conditions, reservations and restrictions to be included in a conveyance under the Act.

(2) The District Engineer has been delegated authority to:

(i) Give notice of any proposed conveyance under the Act and afford an opportunity to interested eligible agencies in the general vicinity of the land to apply for its purchase; and

(ii) Determine the period of time in which applications for conveyances may be filed.

(3) *Notice.* The District Engineer shall give notice of the availability of any land for conveyance under this Act and afford an opportunity to eligible agencies in the general vicinity of the land to apply for its purchase (i) by publication at least twice at not less than 15-day intervals in two newspapers having general circulation within the state in which the available land is located and, if any agency of an adjoining state or states may have an interest in the development of such land for public port or industrial facilities, by publication at least twice at not less than 15-day intervals in two newspapers having general circulation within such state or states, and (ii) by letters to all agencies who may be interested in the development of public port or industrial facilities on the available land.

(4) *Filing of Application.* Any agency interested in the development of public ports or industrial facilities upon the available land shall file a written application with the District Engineer within the time designated in the public notice. The application shall state fully the purposes for which the land is desired and the scope of proposed development.

(5) *Price.* No conveyance shall be made for a price less than the fair market value of the land.

(6) *Conveyance.* Any conveyance of land under this Act for public port or industrial facilities will be by quitclaim deed in the form of Figure 11-5 in EP 405-1-2 executed by the Secretary of the Army.

(d) *Procedure.* (1) Proposals to convey land included in navigation projects for development of public port or industrial facilities will be forwarded by the District Engineer, through the Division Engineer, to HQDA (DAEN-REM), with recommendations, and with the information required by § 644.329, and such additional information as will enable the Chief of Engineers to make the determinations required under paragraph (c)(1) of this section.

(2) Upon receipt of notification from the Chief of Engineers that the property is available for sale for development of public port or industrial facilities, the District Engineer shall give notice of such availability in accordance with paragraph (c)(3) of this section. The public notice will follow substantially the guide format in Figure 11-4 of EP 405-1-2.

(3) If two or more applications are received from eligible agencies, all applications, with recommendations, will be forwarded, through the Division Engineer, to DAEN-REM for the determination referred to in paragraph (c)(1)(iv) of this section.

(4) Upon determination of the actual property to be included in a conveyance, the fair market value thereof will be established by an appraisal.

(5) Upon the acceptance of an application, negotiations will be conducted at the price established by the appraisal. However, the applicant will be advised that the price is subject to approval by the Secretary of the Army.

This is necessary since the Secretary of the Army has not delegated his authority to determine the fair market value for conveyances under this Act. If public port facilities that can be used in connection with proposed industrial facilities have not been constructed in the vicinity, no disposal under this authority will be authorized which does not provide for construction of public port facilities.

(6) Upon completion of negotiations a quitclaim deed following the sample format in Figure 11-5 of EP 405-1-2 will be prepared and forwarded, through the Division Engineer, to HQDA (DAEN-REM) for execution by the Secretary of the Army, in accordance with the general procedure for submission of deeds for execution as outlined in § 644.441.

§ 644.425 Authority and procedure for disposal of surplus property by DA to eligible public agencies.

FPMR § 101-47.303-2 provides that the disposal agency shall allow a reasonable period of time for states, municipalities, and their instrumentalities, to perfect a comprehensive and coordinated plan of use and procurement of surplus property in which they may be interested. This provision applies to surplus property that can be disposed of by negotiated sale under the special acts listed in §§ 644.428 through 644.432 for public highways, streets, and alleys under the Act listed in §§ 644.421 and 644.422, by transfer to the District of Columbia under § 644.407, and under the individual agency negotiating authority of the Federal Property Act, (40 U.S.C. 484(e)(3). A listing of the special acts, with the eligible public agencies, and some guides for classification of property for disposal are contained in FPMR, § 101-47.4905.

§ 644.426 Classification.

Pursuant to FPMR, § 101-47.303-1, any item of surplus land not reported to GSA for disposal in accordance with §§ 644.348 through 644.367 will be classified according to its highest and best use, e.g., industrial, commercial, agricultural, or for disposal under the special acts referred to above. Where required by the special acts, classification will be coordinated with the interested Federal agency. The classification will be recorded on ENG Form 1825 (Real Property Classification), with sufficient information to justify the classification. Surplus property may be reclassified from time to time whenever such action is deemed appropriate. Based on its classification, notice of the availability of surplus land for disposal will be given to public agencies eligible to procure such property as provided in § 644.427.

§ 644.427 Notice to eligible public agencies.

FPMR, §§ 101-47.303-2 and 101-47.308-1, et seq., provide a procedure of formal notice to eligible public agencies of the availability of surplus land for disposal. Notices are not required for property having an estimated fair market value of less than $1,000, except where the disposal agency has reason to believe that an eligible public agency may be interested in the property. Notices as provided in this section will be given for all surplus airport property and surplus fee-owned land for which the Army is the disposal agency, that is classified for disposal under a special act, or if there is reason to believe that a public agency may be interested in acquiring the land by negotiation at its appraised fair market value under the Federal Property Act (40 U.S.C. 484(e)(3)(H).

§ 644.428 Airport property.

(a) *Eligible Transferees.* The right to acquire surplus property without monetary consideration for airport purposes, under 50 U.S.C. 1622(g), with the approval of the Administrator of GSA, is limited to states, political subdivisions, municipalities and tax-supported institutions. This is the proper statutory provision governing transfers of entire military airports to state or local agencies for their use as public airports. The right of such transferees is subordinate to the priority of Federal agencies to acquire the property for their own use. Airport property will not be disposed of for any other non-Federal use until every reasonable effort has been made to dispose of it for airport purposes.

(b) *Preliminary Procedures.* (1) Request a determination by the Administrator of the FAA that the surplus land is essential, suitable or desirable for the development, improvement, operation or maintenance of a public airport as required by 50 U.S.C. 1622(g)(1).

(2) Upon receipt of a determination by the Administrator of FAA, furnish the FAA Regional Office with a description of the property, or a copy of the Standard Form 118 if the property has been reported to GSA for screening, together with a list of the operating and maintenance equipment available for disposal with the airfield, and request that a survey under the Surplus Property Act be made and that, based thereon, recommendations for classification of the property under the Act be furnished.

(c) *Classification.* District Engineers are authorized to approve ENG Form 1825, Real Property Classification, based on FAA recommendations. Generally, the recommendations of FAA in regard to classification of property, will be followed, except the following will be forwarded to DAEN-REM without final classification action: cases involving reduction in land areas, runways, taxiways, etc.; controversial cases; and cases where changes in the reservations, restrictions, or conditions specified in the Act are recommended by FAA. District Engineers will not classify as airport property, property in excess of that recommended by FAA or property of which the highest and best use is determined to be industrial. Where the District Engineer does not agree with the report of FAA, he will immediately submit complete data setting forth all objections to the report, together with his recommendations, to DAEN-REM.

(d) *Notice of Availability.* Upon classification of the property as airport property, notice of the proposed disposal will be sent by certified mail to the political subdivisions, or municipalities in which the property is located, and also to any other state, political subdivision, municipality, or tax-supported institution which the District Engineer has reason to believe may be interested in the property. A reasonable time will be allowed eligible agencies to submit an acceptable application. Figure 11-6 in EP 405-1-2 is a format for use in preparing the notice.

(e) *Advertising.* The proposed disposal of airport property will be advertised in at least two newspapers of general circulation within the state in which the airport is located. This advertising will insure notification to political subdivisions, tax-supported institutions, and others that the property is available. Property not classified as airport property will be advertised in accordance with the applicable requirements for the type of property. However, the first advertising of non-airport property adjacent to an airport will contain a statement that the property may be acquired under section 13(g) of the Surplus Property Act of 1944, as amended, for airport purposes, provided FAA approves such acquisition.

(f) *Form of Application.* Public agencies desiring to acquire surplus airport property will be required to submit an Application For Airport Property (Figure 11-7 in EP 405-1-2). The application includes the provisions of section 13(g) of the Surplus Property Act of 1944, as amended. If the applicant desires to enter and use the property prior to conveyance, such other terms and conditions considered desirable and necessary governing interim use of the property by the applicant will be included. The application will be signed by the applicant and forwarded to DAEN-REM for acceptance by proper authority in the Department. Evidence of the applicant's legal and financial ability to maintain and operate the property, as proposed, will also be submitted with the application.

(g) *Request for Modifications in the Provisions of Section 13(g) of the Surplus Property Act of 1944, as Amended.* Should an applicant request modifications in the restrictions and conditions imposed by section 13(g) of the Surplus Property Act of 1944, as amended, the application and all pertinent data, including the FAA report, will be forwarded to DAEN-REM. If the requested modification is approved, the case will again be referred to FAA for its recommendation. If FAA does not concur in the modification, the fact will be reported to DAEN-REM for further necessary action.

(h) *Personal Property.* Non-industrial personal property of any other nature or description made available for disposal with an airport and located on it may be transferred with the airport on recommendation by FAA.

(i) *Meetings with Public Bodies.* Close cooperation will be maintained with FAA, and its representatives will be invited to participate in negotiations with public bodies in connection with transfer of airport property.

(j) *Land Survey.* In the event that a property survey is required to establish a correct metes and bounds description of the land to be transferred as airport property, a survey will be provided by the prospective transferee without cost to the Government.

(k) *Transfer Instruments.* The type of instrument used in conveying or transferring the Government's interest will vary according to the type of property that may be involved, i.e., wholly Government-owned, mixed owned and leased, and leased property. However, instruments of conveyances will contain provisions required by the Surplus Property Act of 1944, as amended. Where a lease is involved and it is from other than the prospective transferee, such transferee will be required to obtain a long term lease on the land prior to conveyance of the Government-owned improvements. Execution of the lease to the prospective transferee and acceptance of the application by the Government should be handled simultaneously. Figure 11-8 in EP 405-1-2 is a format of quitclaim deed covering fee-owned and leased land (Airport Property). A quitclaim deed can be used to surrender leased land and convey the improvements and related personal property, or this can be done by supplemental agreement to the lease or other type of contract as considered desirable in accordance with local conveyancing practices.

(l) *Recordation.* All transfer instruments will be recorded by and at the expense of the transferee.

(m) *Compliance.* The Administrator, FAA, is responsible for determining and enforcing compliance of conditions and restrictions contained in any instrument of disposal of airport property, and is authorized to reform, correct, or amend any such instrument for such action as deemed necessary by him under applicable law. Care will be exercised to furnish copies of the application, classification, and instrument of conveyance to FAA so that it can properly perform its compliance function.

§ 644.429 Wildlife purposes.

(a) *Authority.* The military departments, when acting as a disposal agency, are authorized under the provisions of 16 U.S.C. 667b-d, in connection with land and improvements that: (1) Can be utilized for wildlife conservation purposes by the agency of the state exercising administration over the wildlife resources of the state wherein the real property lies, or by the Secretary of the Interior; and (2) are chiefly valuable for use for any such purpose and which, in the determination of the GSA is available for such use, to convey such property to such agency without reimbursement or transfer of funds if the management thereof for the conservation of wildlife relates to other than migratory birds, or to the Secretary of the Interior if the property has particular value in carrying out the national migratory bird program. Personal property cannot be conveyed or transferred under this authority and only such improvements as the District Engineer determines to be necessary for proper execution of the applicant's program may be conveyed.

(b) *Notice of Availability.* If property is considered by the District Engineer to be valuable for wildlife conservation purposes, or if interest has been shown in acquiring the property for that purpose, notice of availability should be given to the agency administering state wildlife resources and to the Federal Fish and Wildlife Service if the property has particular value in carrying out the national migratory bird program.

(c) *Classification—Factors to be Considered and Determinations to be Made by Disposal Agency.* Should the property be classified as being chiefly valuable for purposes other than wildlife conservation purposes, such as agricultural, commercial, etc., the property may not be transferred to any State or to the Department of the Interior, under the authority cited in paragraph (a) of this section. However, should an application be received for conveyance of the property for wildlife conservation purposes, and the classification of the property indicates that it is chiefly valuable for other purposes, the classification, all pertinent papers and the application, together with the Division Engineer's recommendation, will be forwarded to HQDA (DAEN-REM), Washington, D.C. 20314. In addition to the determination that the property is chiefly valuable for wildlife conservation purposes and is available for such use, the Division Engineer will determine, when recommending that property be conveyed for such use, that the applicant has the legal and financial ability to acquire, operate and maintain the property as proposed, and will furnish information to DAEN-REM to support his opinion. With proper safeguards, contaminated property can be made available for use in the wildlife conservation program.

(d) *Application.* Any state desiring to make application for property for wildlife conservation will be furnished copies of Application For Real Property For the Conservation of Wildlife with accompanying instructions for preparation. In evaluating the application, the responsible District Engineer will request review of the application by the Regional Office of the Fish and Wildlife Service, Department of the Interior, and will obtain that Service's recommendation as to the value of the property for wildlife conservation purposes.

(e) *Instrument of Conveyance.* Any instrument of conveyance of property for wildlife conservation will contain the restrictions and conditions required by 16 U.S.C. 667b, c, d. A Sample Deed for Conveyance of Land and Improvements For Conservation of Wildlife, with the statutory restrictions and conditions is provided as Figure 11-10 in EP 405-1-2.

(f) *Publication of Order.* The order required to be published in the Federal Register after disposal of the property under this authority will be processed for publication by the Chief of Engineers.

§ 644.430 Shrines, memorials, or religious purposes.

Pursuant to the provisions of FPMR, § 101-47.308-5, when the Department, acting as a disposal agency, determines that a chapel may properly be used in place, a suitable area of land may be sold with the chapel for use as a shrine, memorial, or for religious purposes. The sale price of land for this purpose will be its fair market value based on its highest and best use as established by an appraisal. Deeds conveying lands for such purposes will contain no restriction on the use of the land. Sale of the chapel building will be subject to the procedure and terms and conditions provided in §§ 644.472 through 644.500.

§ 644.431 Power transmission lines.

(a) *Authority.* Pursuant to the provisions of section 13(d) of the Surplus Property Act of 1944, as amended (50 U.S.C., App. 1622(d)), any state, or political subdivision thereof, or any state or Government agency or instrumentality may certify to the disposal agency that a surplus power transmission line and the right of way acquired for its construction is needed for or adaptable to the requirements of a public or cooperative power project. Whenever any property is reported to GSA for screening, it will be assumed that GSA has screened Federal agencies for such purpose and no further screening with such agencies is necessary. Property not reported to GSA for screening will be screened in accordance with §§ 644.333 through 644.339. Screening with the appropriate state agencies will be conducted in all cases.

(b) *Procedure.* Whenever a State, or political subdivision thereof, or state or Federal agency or instrumentality certifies that such property is needed for or adaptable to the requirements of a public or cooperative power project, the property may be sold for such utilization at its appraised fair market value. In the event that a sale cannot be consummated and the certification is not withdrawn, such facts will be reported to DAEN-REM in order that a determination of the action to be taken may be obtained from the Administrator, GSA. If no certification from a state or Federal instrumentality as outlined above is received after proper notice is given, the property may be disposed of in the same manner as other excess or surplus real property.

§ 644.432 Assignment to Department of Health, Education, and Welfare (HEW) or successor agencies for health or educational purposes.

(a) *Authority.* Under section 203(k)(1) of the Federal Property Act of 1949, as amended (40 U.S.C. 484(k)(1)) the Administrator, GSA is authorized, under such regulations as he may prescribe and in his discretion, to assign to the Secretary of HEW for disposal, such surplus real property as is recommended by the Secretary of HEW as being needed for school, classroom, or other educational use, or for use in the protection of public health, including research. The Secretary of HEW is authorized under section 203(k)(1), subject to disapproval by the Administrator, GSA after notice to him from the Department of Health, Education, and Welfare (HEW), to sell or lease surplus real property for such purposes. Pursuant to FPMR, § 101-47.308-4, a military department, when acting as disposal agency is authorized to assign property to HEW for disposal for education or health purposes and to disapprove, within 30 days after notice, any transfer of property proposed to be made by HEW for such purposes.

(b) *Notice to Department of Health, Education, and Welfare or Successor Agencies.* When real property is reported to GSA for screening prior to disposal by the military department, notification will be given HEW by the GSA Regional Office simultaneously with notification to the District Engineer that the property has been determined surplus to Federal requirements. The District Engineer will furnish such notification directly to the appropriate regional representative of the Department of HEW in the case of nonreportable real property immediately after he determines that the property is surplus to Federal requirements. Such notification will include the following information:

(1) A brief description of the property in sufficient detail to enable a determination of its probable suitability for uses authorized in section 203(k)(1) of the Act.

(2) When the property may be inspected and where and how arrangements may be made for inspection of the property.

(3) That the property will be withheld from advertisement for bids for a period of 20 days from the time of the notification unless the office submitting the notification is sooner informed in writing as to whether the property is needed for school, classroom, or other educational use, or for use in the protection of public health, including research. If within that time notice is received of a known potential need, the property will be held for an additional 45 days or until a certification of need or request for assignment is received, whichever occurs first.

(4) The District Engineer shall not give such notification to HEW on surplus buildings and improvements located on surplus leaseholds where their removal from the site will increase the Government's restoration obligations under the lease. Where such a situation exists and GSA is to screen the property prior to disposal by the Department, GSA should be advised to this effect. Where any surplus buildings and improvements (on leaseholds or fee-owned land) are available for off-site disposal, notification will be given HEW (unless time restrictions prohibit as set out in §§ 644.333 through 644.339 and §§ 644.348 through 644.367) but the notification will include the same restoration obligations as would be placed in a sale of the property to a private party.

(5) During the 20-day period, action will be taken preparatory to advertising the property for sale. All inquiries received concerning acquisition of the property for such purposes from the state, or local agencies, or qualified organizations seeking the purchase of available real property for health or

educational purposes will be referred to the appropriate field representatives of HEW. If, within the 20-day period, HEW shall inform the District Engineer of any known potential requirement, the District Engineer will withhold disposition until a certification of need is received but not to exceed 45 days.

(6) Upon receipt from HEW of a certification that the property is needed for educational or public health purposes and a request from HEW for assignment of the property, if the property is available for such purposes, it will be assigned by the responsible District Engineer by letter addressed to the HEW office from which the request for assignment was received, citing the Act and GSA regulations as authority therefor. A copy of such letter of assignment will be furnished to the Regional Office of GSA.

(7) When notification of the proposed disposal is received from HEW, subsequent to assignment, if their is no reason for disapproval of the proposed disposition, notice from the responsible District Engineer to HEW of approval thereof is not necessary. Under section 203(k)(1), approval is automatically given in the absence of notice of disapproval within 30 days from the date of notification of the proposed disposal. If in the request for assignment HEW furnishes the name of the proposed transferee and states that an application from the transferee is on file and that the proposed use by the transferee is one authorized under section 203(k)(1), the District Engineer, in making the assignment to HEW, may state that no objection is interposed to the proposed transfer of the property.

(8) GSA has advised that it is not anticipated that the Corps of Engineers, in acting as the disposal agency, would investigate each request to it by the Department of HEW, because to make such investigations in each case would clearly duplicate the function assigned to the Department of HEW. Doubtful cases would only arise in connection with property for which the highest and best use is industrial or commercial, or where further study may be required by the Federal Government concerning future requirements for the property. In accordance with a further suggestion by GSA, where there is a reasonable doubt as to the propriety of an assignment to HEW or a proposed disposal by it, the request will be referred to GSA for final decision. Such referrals will be made through DAEN-REM.

(9) The District Engineer making the assignment of the property will request HEW to furnish two copies of the sales contract. Upon receipt of these copies, together with a request from HEW that the property be transferred, custody will be given to the grantee or transferee named in the sales contract.

§ 644.433 Surplus disposal to private parties.

General. Sections 644.435(b) through 644.440 cover general procedures for the sale of surplus fee-owned land and easement interests and includes actions to be taken preliminary to proceeding with the appropriate sale procedures set forth in §§ 644.540 through 644.557.

§ 644.434 Cottage site disposal.

Disposal of lots for cottage site development and use is authorized by Pub. L. 84-999 (16 U.S.C. 460e). No new allocations of land for private cottage use will be made. The policy concerning phasing out of existing cottage site areas is set out in ER 1130-2-400. The DE has delegated authority to sell or lease cottage sites. Contract of Sale, ENG Form 3297-R, will be used.

§ 644.435 Procedure.

(a) *Fee-owned land.* When fee-owned land for which the department is acting as disposal agency has been found to be surplus to requirements of the Federal Government, has been classified under § 644.426 and disposal is not made to a state, political subdivision, etc., the property will be offered for sale to the highest responsible bidder, except under special circumstances provided in §§ 644.540 through 644.557.

(b) *Easements.* Easements that are readily assignable will be disposed of in the same manner as fee-owned land. Easements will usually be disposed of with land to which they are appurtenant. Easements may be disposed of to the owner of land which is subject to the easement (the servient estate). A determination should be made as to whether the disposal should be with or without reimbursement to the Government on the basis of all the circumstances and factors involved and with due regard to the acquisition cost to the Government. The amount of such reimbursement should be the appraised fair market value of the easement. In the case of disposal of an easement acquired for the deposit of spoil material a minimum charge of $225.00 will be imposed where relinquishment is being accomplished for the benefit of the owner of the servient estate and where no direct benefit will inure to the Government. A statement as to the commercial value will be made when recommending an easement for disposal. The circumstances and factors leading to these determinations shall be documented and retained in the files (FPMR, § 101-47.313-1).

§ 644.436 Appraisal.

Under the usual circumstances prompt action will be taken to appraise surplus property concurrently with its classification. Appraisals will not be undertaken for property which has been or is likely to be classified for disposal for any of the following purposes: airport; wildlife conservation; public highways, streets and alleys; disposal to the District of Columbia; and property assigned to HEW for disposal. Property that is to be disposed of for other than the above listed purposes will be appraised.

§ 644.437 Disposal plan for fee-owned land.

A disposal plan will be made for each surplus property. It will include the District Engineer's recommendation of the method or methods of disposal and the reasons therefor; for example, whether improvements or minerals and lands should be sold separately; improvements cannibalized; whether the property should be subdivided; the media for advertising; and other pertinent factors. In addition, the following will be included as part of the disposal plan:

(a) Description and map of the lands.

(b) Description of buildings and other improvements.

(c) Appraisal made in accordance with §§ 644.41 through 644.49, unless exempted by § 644.436.

(d) Information as to when, from whom, and how the property was acquired.

(e) Information as to the estate which the Government has in the land, and reservations and exceptions in and to the Government's title. Outstanding interests granted by the Government or reserved or excepted in the acquisition of the lands will be stated with particularity. The map or plat will delineate any grant, exception, or reservation, such as telephone and telegraph, electric transmission, oil, gas and water lines.

(f) Purchase price of land, buildings and improvements acquired with the lands, and the cost of buildings and improvements, if any, constructed by the United States.

(g) If there is an indication of valuable minerals, such statement will be made with full explanatory data.

(h) Where the estimated value of the land together with improvements and related personal property is in excess of $1,000, the disposal plan will be submitted to DAEN-REM for approval.

§ 644.438 Disposal plan for easements.

When recommending disposal of a surplus easement the District Engineer will submit the following:

(a) Information as to when and from whom the easement was acquired.

(b) The consideration paid therefor.

(c) Identification of the installation to which it is appurtenant.

(d) If the easement has no commercial value, the amount that should be paid by the owner of the servient estate, representing a rebate on the purchase price, or the amount paid for severance damages will be specified. (For example, if the easement was acquired for a 15-year period and the price paid therefor was substantial and one year after acquisition it is returned to the owner of the servient estate, an effort should be made to obtain a rebate on the purchase price although the easement has no commercial value. The same would be applicable to the payment for severance damages).

(e) If the owner of the servient estate, or other prospective grantee, is not willing to pay the appraised value in consideration of the release of an easement acquired for a substantial consideration, all action to release the easement will be held in abeyance until such time as an adequate consideration can be obtained for the release. Note the minimum payment for release of spoil easments discussed in paragraph (b) of § 644.435.

§ 644.439 Sale and conveyance.

Sales procedure, including advertising, will be in accordance with §§ 644.540 through 644.557. Normally, conveyance will be by deed, prepared and executed as provided in § 644.441.

§ 644.440 Application of antitrust laws.

Section 207 of the Federal Property Act provides that real property and related personal property with an aggregate total cost of $1,000,000 or more, or patents, processes, techniques, or inventions, regardless of costs, shall not be disposed of until the advice of the Attorney General has been received as to whether the proposed disposal would tend to create or maintain a situation inconsistent with the antitrust laws. Prior to obligating the Government on any such disposal, the District Engineer will furnish DAEN-REM information on the probable terms or conditions. DAEN-REM will use this information as the basis for a request to the Attorney General for advice (FPMR, § 101-47.301-2).

§ 644.441 Preparation and execution of deeds.

(a) *Authority to Execute.* All conveyances of fee ownership and other permanent interests in land which the Army and Air Force have authority to convey under the statutory authorities and delegations set forth in §§ 644.400 through 644.443 will be executed by the Secretary of the Army, for Army land, and by direction of the Secretary of the Air Force, for Air Force land. Conveyances of surplus property that have been assigned to HEW for disposal will be executed by officers of that department.

(b) *Form of Deed or Instrument.* Conveyances of fee-owned land and easements shall be by quitclaim deed prepared in conformance with local law and practice except where it is found that another form of conveyance is necessary or desirable to obtain a reasonable price for the property, or to render the title marketable, or for other reasons. Appropriate recommendations will be forwarded to DAEN-REM. Forwarding correspondence should contain information as to the requirements of local law for witnesses, acknowledgment, authentication of acknowledgment, and other special requirements. The instrument of conveyance should contain a statement that the requirements of 10 U.S.C. 2662 have been met, or that the conveyance is not subject to these requirements.

(c) *Authority for Conveyance.* Authority for conveyance will be recited in the granting clause. Conveyances under the Federal Property Act will recite: "* * * under and pursuant to the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, and the delegation of authority to the Secretary of Defense from the Administrator of General Services Administration (41 CFR 101-47.601) and the redelegation of authority from the Secretary of Defense to the Secretary of the Army (Air Force) (20 FR 7113)." Conveyances to states and their instrumentalities under the special statutes, listed in §§ 644.425 through 644.432, will recite the special statutes, as continued in effect by the Federal Property Act and the delegations. Conveyances to states for wildlife conservation purposes under Pub. L. 537, 80th Congress (§ 644.429) will cite the special act and recite that the property has been determined surplus under the Federal Property Act and delegations thereunder. Conveyances releasing the restrictions contained in a flowage easement prohibiting the construction and maintenance of structures for human habitation should cite as authority for the conveyance the Federal Property and Administrative Services Act of 1949 (63 Stat. 377) as amended, and the Federal Property Management Regulations (101-47.313-11).

(d) *Conditions in the Conveyance.* The deed will contain the reservations, restrictions, or conditions, required by: (1) The directive which authorized the disposal; (2) any special acts under which the property is conveyed; and (3) by any contract of sale, agreement to extend credit, or relocation contract, pursuant to which conveyance is made.

(e) *Acceptance by Grantee.* Where the instrument of conveyance imposes obligations on the grantee, the instrument will be executed and excepted by or on behalf of the grantee prior to forwarding for execution. If the grantee is a corporation or body politic, the instrument will contain a certificate attesting to the authority of the officer executing the instrument to act for and bind the corporation or body politic, and that his signature is genuine. Where a resolution or other special action is necessary to legally bind the grantee, a copy will be attached to the instrument.

(f) *Execution of Deed.* (1) The Division Engineer will forward to DAEN-REM a draft of the deed, prepared in final form, together with copies of as many of the items listed below as are appropriate depending on the nature and purpose of the conveyance, any other information necessary for a complete understanding of the case, and the remarks and recommendations of the Division and District Engineer. Upon approval of the proposed disposal by DAEN-REM, the deed will be forwarded to higher authority for execution and returned to the District Engineer for delivery and distribution.

(2) Items to be forwarded with draft of deed proposed for execution, as appropriate:

(i) Real Property Classification, ENG Form 1825.

(ii) Application or plan for use and procurement with recommendations and determinations of other interested Federal agencies when the conveyance is under one of the special acts listed in §§644.425 through 644.432.

(iii) Disposal plans.

(iv) Appraisal where not included in paragraph (f)(2)(iii) of this section.

(v) Statement on advertising conducted.

(vi) Abstract of bids.

(vii) Relocation contract or change agreement.

(g) *Distribution of Deeds.* Deeds will be delivered by the District Engineer and recorded by or at the expense of the grantee. Upon delivery and recordation of any deed conveying Army, Air Force, or nondefense property, the District Engineer will conform two copies by endorsing thereon the date and manner of delivery, and the date, time and place of recordation in the public land records. One conformed copy will be forwarded to HQDA (DAEN-REM) WASH DC 20314, and the other conformed copy to HQDA (DAEN-REP) WASH DC 20314. This requirement extends to copies of deeds executed by other disposal agencies and furnished District Engineers pursuant to FPMR, § 101-47.307-3(b). Two additional copies of deeds delivered by District Engineers will be conformed and furnished any other Federal agency charged with compliance enforcement of any reservations, restrictions, or conditions in the deed.

§§ 644.442—644.443 [Reserved]

Disposal of Leaseholds and Leasehold Improvements

§ 644.444 Authority.

Surplus leasehold interests in real property are disposed of under authority delegated by the General Services Administration (GSA) to the Department of Defense (DOD). DOD has redelegated this authority to the military departments. DEs, within the limits of the authority delegated, have been authorized to terminate leases, execute agreements in settlement of restoration obligations, and perform necessary restoration work required by lease terms, directly or by contract, in accordance with the provisions stated in §§ 644.444 through 644.471. Exceptions are where: (a) Under the terms of the lease the leasehold is transferable to third parties or Government-owned improvements on leased airport or other special types of leased property have an in-place value to the lessor for airport or other special purposes; or (b) the leasehold or Government-owned improvements may be disposed of to eligible public agencies under special statutes (FPMR 101-47.4905), in which cases the procedures provided in §§ 644.400 through 644.443 will be applied to the extent applicable. Disposals within the scope of the above exceptions require the prior approval of DAEN-REM.

§ 644.445 Procedure for termination of leases.

When leased premises are no longer required for use by the Government, a notice of termination will be given to the lessor in accordance with the terms of the lease, effective as of the date of vacation. The termination notice will be served sufficiently in advance to allow time for compliance by the Government with terms of leases providing for removal of improvements and restoration of premises. Where a lease does not contain provision for continuing renewal without notice and will automatically expire, the Government is not required to give notice when it intends to surrender the premises at the expiration of the lease. However, the lessor should be informed, as far in advance as possible, of the Department's intention to vacate, in order that he may plan for a new tenant for other use of the premises. Where a lease provides for a continuing renewal without notice, the DE will ascertain in advance of the beginning of each fiscal year whether the using service has need during the next fiscal year for the premises. When the premises are no longer required, a notice of termination will be served in accordance with the terms of the lease. In the event the lease does not provide for termination by the Government, but the lessor will consent to termination, either in its entirety or partially, a supplemental agreement should be entered into to terminate or amend the lease as of the date the premises will be vacated, Government improvements removed, and restoration completed.

(a) *Forms of Notice of Termination.* Where leases provide for restoration, Notice of Cancellation (Restoration) will be prepared in sextuplet in accordance with Figure 11-11 in EP 405-1-2. Notice of Cancellation, Figure 11-12 in EP 405-1-2, will be used for leases which do not provide for restoration or for leases where written notice requiring restoration has been submitted by the lessor prior to termination. Notice of termination will be prepared on the letterhead of the DE concerned, who will assign his own form-letter number.

(b) *Manner of Serving Notice of Cancellation.* The Notice of Termination must conform to requirements of state law, and will, whenever possible, be served personally upon the lessor. In some states, to be legally effective personal service is mandatory, unless expressly waived. The lessor will be requested to execute the acknowledgment of receipt of notice on the form. Where the service is effected by registered or certified mail, a return receipt will be requested and a sufficient number of days (in addition to the stipulated period of notice) will be allowed for transmission and receipt of notice. The return receipt properly signed will be evidence that full notice required by the lease has been given. Should the owner refuse or fail to acknowledge receipt of the notice, the officer serving the notice will so certify thereon, giving the date and method of service. In the case of an absentee lessor, where time will not permit use of certified or registered mail for effecting service, notice will be given by telegram to be delivered, not telephoned, to the addressee. In the case of notice by personal service, any available Army facility or personnel in the lessor's locality may be used.

(c) *Distribution of Notice of Termination.* The original notice of termination will be delivered to the lessor; one copy to the finance and accounting officer who pays the rental; one copy to the using service; and one copy to the DE office files.

§ 644.446 Vacation and protection of premises.

The DE will take action to insure that the premises are vacated by the using service on or before the date specified in the termination notice (or the date of expiration of the lease where formal notice is not required), and will assure provision is made by either the using service or the DE, as appropriate, for proper protection of the property pending the transfer of custody to the lessor pursuant to §§ 644.368 through 644.375 and AR 405-90.

§ 644.447 Joint survey of premises.

(a) *When Required.* As soon as practical after restoration is requested by the lessor, a terminal condition report to reflect the condition of the leased property as of the termination of the lease, and a terminal survey to determine the extent of restoration required, if any, will be prepared. The lessor will be invited to have his estimators accompany the survey party. The lessor's estimates of restoration costs should be obtained promptly, and included in the terminal survey for purposes of comparison in accordance with paragraph (c) of § 644.454. Survey and condition reports will not be limited to items for which the lessor specifically requests restoration, but will include all items which the DE determines should be restored in order to fulfill the Government's obligation under the lease.

(b) *Contents.* The report will show, in detail, the work items necessary to place the premises in as good a condition as they were at the time they were taken over by the Government, as disclosed by the survey and condition report made at that time, reasonable and ordinary wear and tear, damages by the elements, or circumstances over which the Government has no control, excepted.

(c) *Housing Leases.* The tenant of leased housing is personally responsible for damage to the property, beyond reasonable and ordinary wear and tear, resulting from his acts, the acts of members of his family, his invitees and licensees. Restoration of leased housing therefor should be coordinated with the using service to minimize payments for repairs which are the obligation of the Government's tenant.

§ 644.448 Limits on government obligation to restore.

The standard lease forms may provide that the Government will, if stipulated notice is given by the lessor, restore the premises to as good a condition as they were in at the time of entering into possession, reasonable and ordinary wear and tear, and damages by the elements, or circumstances over which the Government has no control, excepted. This requirement is subject to certain limitations.

(a) *Restoration Not to Exceed Fee Simple Value.* The cost of restoration, or settlement in lieu thereof, will not exceed the fee simple value of the property restored to the condition that existed at time of entering into possession, reasonable and ordinary wear and tear, and damages by the elements, or circumstances over which the Government has no control, excepted. The valuation should be fixed as of the time of termination of the lease.

(b) *Where Estimated Cost of Restoration Exceeds Diminution in Value.* When it appears that the estimated cost of restoration substantially exceeds the diminution in the value of the premises, occasioned by the Government's use and the damage therefrom, an appraisal will be made of the present value of the property in its unrestored condition and a separate appraisal will be made of the present value of the property, assuming restoration is accomplished as provided in the lease. The difference between the unrestored and restored value, as determined by comparison of the appraisals will be the amount of diminution in the value of the lessor's property and will be the maximum amount of the restoration obligation. As to the measure of damages to be used in establishing the Government's restoration obligation under leases which contain the standard restoration provision, the Comptroller General decided that, "This office would not be warranted in concluding that any greater amount could be legally expended for restoration or paid to the lessor in lieu thereof than the amount by which the market value of the premises has been diminished" (28 Comp. Gen 206). As a corollary, restoration, or payment in lieu thereof, is not authorized where Government improvements enhance the value of the property. Representatives of the General Accounting Office have advised informally that it is not the intention to have appraisals made of the before and after value in each instance and that the lack of such appraisals will not be the cause for questioning a restoration settlement. It is considered, however, that where the estimated cost of restoration is a substantial amount in comparison with the value of the property covered by the lease, such appraisals should be made. Obviously, however, it would not be to the Government's advantage to make appraisals where the estimated restoration cost is small.

§ 644.449 Requirement for notice by lessor.

Ordinarily, notification by the lessor of his intention to require restoration of the premises is, when required by the terms of the lease, a condition precedent to any obligation on the part of the Government to restore and is a vested contract right which no part of the Government has authority to give away or surrender (16 Comp. Gen 92; Simpson vs. United States, 172 U.S. 372; United States vs. American Sales Corp., 27 F. 2d 389, affirmed in 32 F. 2d 141, certiorari denied, 280 U.S. 574; Pac. Hardware Co. vs. United States, 49 Ct. CL 327, 335). However, it has been held in the case of Smith vs. United States, 96 Ct. CL 326, that a formal written notice of demand for restoration might be waived, provided knowledge of the lessor's intention to require restoration was conveyed to the Government orally or by implication at, or prior to, the time required under the terms of the lease. In opinion B-48678, 10 April 1945, the Comptroller General expressed the following views along this line:

(a) In leases pertaining to provisions for termination by the Government prior to the end of the term, and which require 60 days written notice of demand for restoration, a supplemental agreement relinquishing space prior to the end of the term, which contains a stipulation excepting restoration from the provisions of the release may be regarded as notice to the Government of the lessor's intention to require restoration and an otherwise proper claim for restoration may be considered where the entire transaction is in the interest of the United States.

(b) In leases which require 30 days written notice of termination and 30 days notice of demand for restoration, waiver of termination notice by the lessor would constitute sufficient consideration to support a waiver of restoration notice by the Government where the effect of waiving the notices would be to protect more adequately the Government's interest through immediate termination of the lease.

(c) Generally, in leases which require 90 days written notice of demand for restoration and 30 days written notice of termination, if it is determined administratively under the particular facts, that the failure to give restoration notice until receipt of termination notice does not affect the merits of the claim for restoration, or operate to the prejudice of the United States, an otherwise proper claim for restoration may be considered.

(d) As a general rule, in leases which require 30 days written notice of termination and 30 days written notice of demand for restoration, notice of demand for restoration given within a reasonable time after receipt of termination notice would be sufficient and, in this connection, a few days delay would not be regarded as unreasonable. Where restoration is predicated on other than strict compliance by the lessor with requirements of the lease relative to notice requiring restoration, the facts will be clearly stated in the restoration assembly.

§ 644.450 Items excluded from usual restoration obligation.

Damage to the following items will not ordinarily be restored as under the standard provisions of the lease it will be attributable to reasonable and ordinary wear and tear, damage by the elements, or damages by circumstances over which the Government has no control. (However, where the lease requires the Government to maintain the interior or exterior, or both, such of the items as the Government is obligated to repair during the term of the lease should be included in the restoration if they have not been maintained adequately by the Government and are not in the required condition upon the termination of the lease.)

(a) Foundation work.

(b) Waterproofing or membraning.

(c) Exterior tuck pointing.

(d) Cleaning or repair of catch basins, cesspools, or manholes.

(e) Repair of: (1) Interior unfinished walls.

(2) Unfinished hollow tile, concrete block, or gypsum block walls.

(3) Floor joints, roof trusses (including roof boards and roofing), and framing timbers (including studs, sheathings, and exterior surface).

(4) Insulating materials in walls necessitated by leakage in walls or roofs.

(5) Damage to plaster caused by leakage in wall or roof.

(6) Windows and floors, where the damage is caused by elements or inadequate hinging, counterweighting, caulking or sealing.

(7) Sheet metal such as eaves, gutters, downspouts, flashings, hips, valleys, skylights, ventilators, and metal ceilings.

(8) Structural steel or iron.

(9) Fire escapes.

(10) Heating systems.

(11) Plumbing systems.

(12) Ventilating systems and air conditioning systems.

(13) Power plants.

(14) Electric wiring.

(15) Lighting fixtures (or replacement).

(16) Sprinkler systems.

(f) Settling or subsidence.

(g) Other structural repairs to buildings or equipment.

§ 644.451 Nature of required restoration.

Restoration by the Government will ordinarily include the following:

(a) Wear and tear beyond that which is reasonable and ordinary.

(b) Damage due to negligence by Government personnel.

(c) Restoration or reinstallations necessitated by alterations or removals by the Government.

(d) Neutralization of unexploded bombs or artillery projectiles, disposition of military scrap, and decontamination of chemically contaminated lands or improvements. (See §§ 644.516 through 644.539).

§ 644.452 Minor restoration cases—determining extent of restoration required.

(a) In minor restoration cases, ENG Form 1440A-R, Joint Terminal Condition Survey, will be used. The Government representative, in these cases, will also make a detailed investigation as to the extent of damages, cost of repairs, and other factors sufficient to properly complete and sign ENG Form 1440B-R, Cost of Restoration. In order to effect economies, the DE may arrange for the utilitization of the services of the Facilities Engineer or the using service to perform joint terminal condition surveys. Such use, however, should be coupled with issuance of proper instructions for guidance of the respective personnel. A restoration case is considered to be minor under the following conditions:

(1) The initial cost of Government improvements or alterations did not exceed $5,000; and

(2) The net salvage value of Government improvements remaining does not exceed $1,000; and

(3) The cash payment to the lessor in lieu of restoration does not exceed $1,000; and

(4) The lessor has agreed to accept a cash settlement in lieu of physical restoration.

(b) *Preparation of ENG Form 1440-R.* Use of ENG Form 1440B-R is premised upon the ability of the field investigator to adequately analyze conditions and develop sufficient supporting data as to the cost of the items of restoration involved. While this form is considered self-explanatory, the following is to be noted:

(1) The procedure hereunder envisions the use of both ENG Form 1440A-R and ENG Form 1440B-R, which complement each other.

(2) The use of ENG Form 1440B-R for estimating restoration costs does not waive the requirements for a proper evaluation of the Government's restoration obligations either as to the legal principles or as to the proper measure of damages.

(3) Distribution of these forms, together with any supporting exhibits, will be accomplished in the same manner as set forth in paragraph (b) of § 644.460.

§ 644.453 Major restoration cases—determining extent of restoration required.

(a) *Engineer Estimate and Appraisal.* Any restoration case not covered by the definitions of minor restoration case in paragraph (a) of § 644.452 is a major restoration case. A complete engineer estimate and appraisal will be prepared by the DE for use in negotiating a cash settlement, or to determine the cost of restoration, if the work is to be performed by the Government. ENG Form 1440-R, Cost of Restoration, will be used for this purpose. A copy of this form will be transmitted to the General Accounting Office in support of settlements made with landowners in the case of military property and contains the minimum data required by that office. Such transmittal is not required when civil works property is involved. In order to afford a measure of flexibility, ENG Form 1440-R is divided into five parts, each relating to specific factors, to be used as conditions may require.

(b) *Preparation of ENG Form 1440-R.* Comments and instructions for preparation of ENG Form 1440-R are contained in the following paragraphs which are keyed to the item numbers on the Recapitulation sheet, Part I of the form:

(1) "1" to "6" Self-explanatory.

(2) "7. Original Cost (Actual or Estimated) of Government-owned improvements, fixtures and alterations: (Part 4)." The General Accounting Office requires that, in all cases involving the relinquishment of Government-owned improvements to lessors in lieu of restoration, and in any other cases where a contract is entered into between the Government and another party to transfer improvements, the original cost of the improvements be given. If not ascertainable, an estimate should be submitted. In exceptional cases, where, because of the circumstances or expense of the work involved, neither the original cost nor a reasonably accurate estimate can be given, an explanation of the facts and circumstances is required. Where structures have been built under contract, or improvements made under contract, a citation to the contract under which the work was performed should be submitted with the original cost statement, estimate, or explanation.

(3) "8. Estimated Market Value, (Value in place of Government-owned improvements, fixtures, and alterations): (Part 4)." An estimate will be made of the current market value of the buildings or improvements in place. In those cases where it is indicated that the Government-owned buildings or improvements located on leased lands may materially enhance the value of the leased site, an appraiser will estimate the market value of the fee title to the leased area in its unrestored condition. He will also separately estimate the market value of the site, assuming restoration as provided in the existing lease. The difference between the fee title value and restored land value will be reported as the "value in place" of the improvements to be sold or otherwise disposed of. "Value in place" is defined as the amount by which the improvements involved enhance the market value of the leased site. This value will serve to establish the top sales price expectancy in negotiations with the landowner.

(4) "9. Gross Salvage Value of Government-owned property: (Part 4)". The "gross salvage value" is the highest price obtainable in the open market for Government-owned improvements when sold for use elsewhere than on the leased premises, assuming that no expense to the buyer is involved in the dismantling and/or removal of the improvements from the leased property to the nearest probable market or location of future use. The estimate of gross salvage value should be made in accordance with established property appraisal procedures. Because market demand usually determines the highest and best use to which the components of a group of improvements will be put (e.g., whether a building will be worth more on the market for moving intact to a new site for continued use as a building, or worth more as a stockpile of used con-

struction material), it is important to consider not only prevailing market prices and demand for used construction materials in the vicinity by contacting sources such as local building trades, wrecking companies, used material dealers, etc., but to also give consideration to possible interest by house moving and construction companies and individuals who might utilize improvements intact. Due consideration should also be given in making the estimate to the effect that such facts as the original cost of the improvements, the original cost of the materials therein, and the deterioration or depreciation of the materials in place might have upon the market value.

(5) "10. Estimated Cost of Dismantling and/or Removal of Government-owned Property: (Part 4)." The estimated dismantling cost and/or cost of removal will be itemized in the appropriate column opposite the itemized listing of improvements on the ENG Form 1440-R (Part 4), and the total will be reflected on the recapitulation sheet (Part 1). The dismantling cost is the amount of expenditure necessary to accomplish dismantlement in a manner providing the greatest net return to the Government. Net return is the value of the improvements when detached or dismantled, less the cost of dismantling or detaching, and less the cost of removal. The cost of removal is the cost of moving the detached or dismantled improvements to the nearest probable market or the nearest installation of the Department having adequate storage space. In cases of frame buildings having concrete or similar permanent-type floors or foundations, the cost of removal of such floors or foundations will not be included as an item of dismantling and/or removal cost. Instead, it will be treated as an item in the estimated "Cost of Restoration other than Cost of Dismantling and Removal" (Item 12). In developing estimates of gross salvage value and costs of dismantling and/or removal, inquiry should be made of experienced tradesmen, used material dealers, wrecking contractors, etc., familiar with the local market for the types of materials and services involving the current costs of loading, hauling, unloading, cleaning, stockpiling and other economic factors contributing to the current local market value of similar materials in useable form.

(6) "11. Estimated Net Salvage Value of Government-owned Property: (Part 4)". This amount is obtained by subtracting the estimated cost of dismantling and/or removal (Item 10) from the estimated gross salvage value (Item 9).

(7) "12. Cost of Restoration other than Cost of Dismantling and Removal: (Part 3)". From information developed by the joint survey of the property, § 644.447 of this part, it is the responsibility of the real estate officer, or his representative, to advise the personnel responsible for preparing the restoration cost estimate of the items which will require restoration, repair or replacement under the terms of the lease. A brief statement as to the probable cause of damage, in excess of ordinary wear and tear, or resulting from other than circumstances over which the Government has no control, will be included in the supporting data.

(8) "13. Total Cost of Restoration: (Item 10 plus Item 12)". The estimates of cost under Items 10 and 12 will be based on sound estimating practices generally employed for the type of work involved. The estimates will be predicated on performance of the work by contract and, therefore, consideration will be given to justifiable allowances for contractor's profits, insurance, employees compensation payments, and overhead.

(9) "14. Net Cost of Restoration: (Item 9 minus Item 13)". In those cases where the cost of dismantling and/or removal of Government-owned improvements (as defined in Item 10), and the other costs of restoration (as defined in Item 12), exceed the gross salvage value (as defined in Item 9), the difference is a minus quantity and constitutes the maximum amount of money which the Government can pay the lessor, in addition to transferring all improvements to him in lieu of restoration and paying rent during the estimated period of restoration (provided such improvements are not considered to have an "in place" value). If

this is a plus quantity, it represents the minimum amount of cash that the Government can accept from the lessor after transferring to him all items of property or equipment shown in the report, less the allowance for rental during the estimated period of restoration.

(10) "15. Approximate Time Required for Actual Salvaging and Restoration Operations". So long as the owner is deprived of use of his property he is entitled to rental stipulated in the lease. A fair allowance will be made in a settlement with the lessor to cover a reasonable time required to fit the premises for use. If all improvements are to be left in place, it may well be that no allowance for rental will be required by the lessor for time required for salvaging.

§ 644.454 Negotiating restoration settlements.

Negotiated settlements in lieu of performance of actual restoration work by the Government are ordinarily favored because they most satisfactorily achieve the objectives of fulfilling the Government's obligations under the lease in the most efficient and economical manner, recouping the greatest amount of the Government's investment in improvements to leased property and maintaining good public relations in the acquisition and disposal of leaseholds. However, because of variable circumstances, this principle cannot be stated as an inflexible rule applicable to every case. It is the responsibility of the DE to carefully consider all possible approaches within the scope of this chapter and select the best course of procedure in each case.

(a) *Financial Limitations Which Preclude Actual Restoration.* In view of the limitations of the Government's restoration obligations to amounts not in excess of the fee value of the leased property, or the difference in values of the leased property with and without restoration, actual performance of restoration work is precluded where these amounts would be exceeded, and a settlement in lieu of restoration is in order in amounts not to exceed the limitations indicated.

(b) *Settlement Where Property Enhanced in Value by Improvements.* Where the leased property has been enhanced in value by the Government's improvements, no restoration should be performed nor payment by the Government made in lieu thereof. Instead, effort should first be made to obtain from the lessor a cash payment to the Government equal to the in place value of the improvements, together with a full release of the Government from any restoration obligations. If the lessor is not willing to pay the in place value, but will offer a lesser amount in excess of the estimated net salvage value, settlement may be reached on that basis. If the lessor will not agree to make payment of any amount, or will offer only an amount which is less than the net salvage value of the improvements, consideration should be given to selling the improvements for removal and accomplishing any remaining restoration by payment in lieu thereof or by actual performance of the work. If it becomes necessary or advisable to arrange for separate sale of any or all of the improvements, the sale should be accomplished in accordance with §§ 644.540 through 644.557. The terms of sale in such case will require the removal of the improvements on or before the expiration or termination of the lease and contains any other special requirements applicable to the particular case, including site restoration. Bids received should be compared with the highest price offered by the lessor, due consideration being given to the cost of restoration, if any, which would remain after removal of the improvements. It must always be borne in mind that the disposition of public property to private parties must be at prices which can be shown to be in the best interests of the Government.

(c) *Reaching Agreement on Estimates of Cost.* The terminal survey and condition reports specify the items to be restored and the lessor's estimate of cost. Those items reflected on the ENG Form 1440-R (Part 3) afford comparison between the lessor's and the Government's estimates. Where there is a variance in the estimates and the lessor's total estimate is lower, effort will be made to settle on the basis of his estimate. If the lessor's overall estimate is higher than the Government's, effort will be made to reach agreement on acceptance of the Government's total estimate. If the lessor's estimate is substantially higher on specific items, it may be desirable to disclose the basis on which the Government's estimate is predicated in order to demonstrate its reasonableness. The Government's estimate of cost for items of restoration may be made available to the lessor upon request. When the lessor requests items of work not shown on the Government's estimate, careful consideration will be given to his request, further inspection of the premises made, when necessary, and a determination made as to whether the Government is obligated under the lease to perform the work. If no liability is determined to exist, the lessor will be fully informed as to the reasons for noninclusion in the estimate. If liability is determined to exist, the estimate will be adjusted accordingly. In any case where the existence or extent of the legal obligation of the Government to restore is questionable, the DE will submit the facts, in writing, to DAEN-REM together with his recommendation. No lease restoration settlement will be allowed to become involved in litigation or formal claims procedure without the matter having been submitted to DAEN-REM for review. When a satisfactory cash settlement by the Government cannot be negotiated, the DE is authorized to perform the actual restoration work.

§ 644.455 Claims for loss or damage of personal property.

In some cases, owners have been allowed to store personal property, owned by them or under their control, on premises leased from such owners by the Government, the personal property not being covered by the lease. The rooms in which this property was stored have been broken into and, upon termination of the lease, it has been found that much of the property is damaged or is missing. Unless the lease specifically places some responsibility on the Government, payment for such damaged or missing property cannot be included in restoration settlements for payment. In the event the lessor refuses to sign a full release, a provision may be included in the supplemental agreement releasing the Government from all liability except for claims for damage, loss, or destruction of personal property stored on the leased premises and not covered by the lease, and the lessor advised that he may submit a claim for the amounts which he considers due him.

§ 644.456 Rent during the period required for restoration.

A sufficent period of time for performance of the restoration, commencing on the date premises are vacated by the Government, will be specified in the Government's estimate, and rent allowed in the settlement during such period to the extent that the lessor is actually deprived of beneficial use. If there is an outstanding maintenance and operation contract with the lessor, contained in either the lease or in an independent instrument, which fixes compensation in addition to the rent, the settlement agreement with the lessor will include the rent and such part of the compensation for maintenance and operation as will be necessarily incurred by the lessor during the performance of restoration.

§ 644.457 Settlement where part of the premises is surrendered.

Where there is a partial reduction of area in a lease requiring restoration, the supplemental agreement may contain a settlement in lieu of restoration of the area surrendered. A waiver of further claims covering the space released will be contained in the supplemental agreement.

§ 644.458 Documenting lease terminations and restoration settlements.

In the case of leases in which there is no obligation to restore, and in all cases of leases where terminal survey discloses no damage to the premises for which the Government is liable, an effort will be made to obtain an unqualified release from the lessor as of the date the premises are vacated and Government improvements removed.

Releases will also be obtained as indicated in § 644.462.

(a) *Form to be Used.* Releases will be executed. in triplicate, on ENG Form 232-R, Release (Corporation), or ENG Form [illegible] Release (Partnership), accord[illegible] whether the lessor is a corpora[illegible] partnership. If signed by an [illegible]ey or agent, evidence of auth[illegible] should be attached to the release. [illegible] the lessor is an individual, a letter incorporating a Notice of Termination and a Release Clause will be sent. The letter will substantially follow the form shown in Figure 11-16 in EP405-1-2. Distribution of releases will be accomplished in the same manner as set forth in § 644.460.

(b) *Qualified Release.* In case the lessor declines to sign an unqualified release, he should be requested to execute an appropriate release subject to exceptions. The exceptions may be enumerated on the reverse side of the form.

§ 644.459 Preparation of supplemental agreements effecting settlement.

The terms of settlement in lieu of restoration, negotiated with the lessor, will be embodied in a supplemental agreement to the lease, antedating termination, substantially in accordance with ENG Form 341, Supplemental Agreement Transferring Improvements to Lessor. Supplemental agreements may be used to effect restoration settlements of obligations incurred under permits, trespass right agreements, and other unnumbered contracts for the temporary use of land. Restoration settlements may also be effected even though the premises were occupied rent free and without formal contract, provided use of the premises was authorized properly by the Government (Decision of the Comptroller General B-63340, February 1947). Care should be exercised in determining the existence and extent of the legal obligation of the Government to restore. Payment will not be made for doubtful items; instead, the other party to the agreement will be advised of his right to submit a claim. On the other hand, every effort will be made to agree upon a reasonable settlement as to items for which the Government is legally responsible.

§ 644.460 Supplemental agreement assembly.

(a) *Composition.* Supplemental agreement assembly, covering agreement for settlement in lieu of restoration, will be composed of the following:

(1) Completed Notice of Termination.

(2) ENG Form 340 (Supplemental Agreement Accepting Proposed Restoration) or ENG Form 341 (Supplemental Agreement Transferring Improvements to Lessor).

(3) Lessor's notice requiring restoration, unless the lessor has signified that restoration is not required.

(4) Joint terminal survey and condition report.

(5) ENG Form 1440-R, or 1440A-R and 1440B-R.

(6) Estimated cost of restoration of leased personal property if not otherwise included.

(7) Statement of cost of any restoration actually performed by the Government.

(b) *Distribution.* An executed copy of the assembly will be retained by the DE. An executed copy of the supplemental agreement will be furnished the lessor. Conformed copies will be transmitted to the major command, the installation commander and, when monetary consideration is involved, to the appropriate finance and accounting office.

§ 644.461 Payment for restoration or settlement in lieu of restoration.

Voucher forms, appropriate to the circumstances, will be used in making payment of the settlement. Reference should be made on the voucher to the lease and supplemental agreement. The cost of restoration work performed directly by the Government, or by contract, or compensation in any settlement agreement in lieu of restoration, will be paid from funds available for the payment of rental. The limitations of section 322 of the Economy Act of 1932, as amended (40 U.S.C. 278a and b), on the expenditure of funds for the alteration, improvement, or repair of leased premises to 25 percent of rent for the first year, are not applicable to costs of performing restoration work pursuant to obligations of the lease nor for payments of settlements in lieu thereof (20 Comp. Gen. 105).

§ 644.462 Performance of restoration work by district engineer—extension of time.

Where the lessor will not accept a cash settlement in lieu of restoration, or desires the work to be done by the Government, the restoration will be performed, without delay, directly or by contract, within the limitations outlined in this Subpart. Any contract entered into for such work should provide for required restoration work to be performed on or before the determined effective date of termination of the lease. A complete record of the items of work performed and the costs thereof will be kept. If the lessor, prior to commencement of the work, is not agreeable to executing ENG Form 340, A Supplemental Agreement Accepting Proposed Restoration, efforts will be made, upon completion of the work, to obtain a release on ENG Forms 232 [illegible] or on ENG Form 341 in the event of a cash settlement for that part of the restoration not performed. Where the Government is obligated to perform restoration and remove improvements, and it cannot be accomplished by the Government prior to the effective date of termination, a supplemental agreement will be prepared, antedating the effective date of termination, for such periods as may be required to effect restoration and to remove improvements, if the lessor is unwilling to terminate the lease and rental thereunder, with the reservation that the Government will have a right upon the premises for the purpose of performing restoration, conducting sales of improvements thereon, or doing similar acts related to restoration.

§ 644.463 Termination and settlement of leasehold condemnation proceedings.

(a) *Leasehold Condemnation Termination Assembly.* When leasehold estates in land, or other similar limited estates or terms for years, acquired or in the process of acquisition, have been determined surplus a prompt report will be made to DAEN-REM containing the following items of information as appropriate and necessary to a full understanding of the proposed disposition action:

(1) Name of project and using service.

(2) Style and civil number of the condemnation proceedings in which the land is involved.

(3) Particular tract or tracts involved.

(4) A citation of the authority pursuant to which the surplus status has been determined.

(5) Three copies of ENG Form 1440-R, or 1440A-R and 1440B-R.

(6) The proposed date of vacation of premises by Government.

(7) The term condemned and rights of the Government as to extension and cancellation thereof.

(8) Whether a declaration of taking, or supplement thereto, has been filed and the amount of deposit, if any.

(9) Whether an award or order for payment has been made, and the amount of the owner's withdrawal, if any.

(10) The estimated rental cost through the end of the term acquired in the condemnation proceeding.

(11) The estimated fair rental value of the land for the period of occupancy by the Government, including time for restoration.

(12) Recommendation as to the advisability of abandoning the proceeding.

(13) Request for termination of condemnation proceeding.

(b) *Action by Chief of Engineers.* DAEN-REM will review the termination assembly and settlement proposal recommended and, if approved, recommend to the Department of Justice a basis for settlement at the same time requesting the Department of Justice to move for termination or conclusion of the proceedings.

§ 644.464 Negotiating stipulation where proposed settlement not acceptable.

Should the court overrule the motion for abandonment, or should it appear that claims for damages will be interposed by the property owner, the responsible DE and the Department of Justice representative will negotiate with the owner for the purpose of obtaining his consent to the abandonment of the condemnation action. The Government will agree to pay the owner a sum representing the rental value of the premises for the period of occupancy by the Government, plus the cost of restoration as determined under §§ 644.452 and 644.453. Such estimate will include the value of personal property, buildings, crops, and other property damaged, destroyed or lost by the Government. DAEN-REM upon recommendation of the DE will request the amendment of the proceeding to include the taking of any property for which compensation is to be paid. The same criteria for settlement with lessors as under a negotiated lease will govern. In the event the landowner will not agree to settle, his best offer will be submitted to DAEN-REM, with the DE's recommendation, for consideration. If a tentative settlement is reached, the terms will be included in a stipulation to be filed in the condemnation proceedings, after approval by DAEN-REM and the Department of Justice, which stipulation will specifically provide:

(a) That the property owner releases and relinquishes all claims of any nature whatsoever which have arisen, or may arise, out of the Government's occupancy of the property; and

(b) That the owner consents to the abandonment and dismissal of the condemnation proceedings. Where the settlement amount is to be paid directly to the owner by the DE in lieu of deposit in the proceedings, the stipulation will so provide.

§ 644.465 Physical restoration where stipulation not obtained.

If such stipulation is not obtainable, then, whether or not a declaration of taking has been filed, the owner will be requested to designate, in writing, the restoration for which he believes the Government is liable. The Government will restore the property to the condition existing at the time of first entry by the Government, except for reasonable and ordinary wear and tear, damage due to acts of God, or circumstances over which the Government has no control. The cost of restoration or settlement in lieu thereof will be limited as outlined in this subpart.

§ 644.466 Release and record of physical restoration.

The responsible DE, upon completion of restoration, will make every effort to obtain a release of further claims for damages. A complete record of all items of restoration and the cost will be kept for use at the final hearing in condemnation or in any collateral proceedings, in the event a release is not obtained. Where litigation is anticipated, photographic evidence of work peformed will be obtained.

§ 644.467 Condition reports.

Survey and inspection reports covering the real estate, and inventory and condition reports covering the personal property located therein, made prior to first entry by the Government under condemnation proceeding, will be compared with the condition shown by similar reports made when the using service vacates the property.

§ 644.468 Settlement of claims.

Claims for damages or restoration filed in condemnation cases, when practicable, will be settled in the condemnation proceeding to avoid separate suit by the owner to recover compensation to which he may be entitled. In such cases request will be made of DAEN-REA-C to have the proceeding amended to enlarge the issues to include restoration.

§§ 644.469—644.471 [Reserved]

DISPOSAL OF BUILDINGS AND OTHER IMPROVEMENTS (WITHOUT THE RELATED LAND)

§ 644.472 Authority.

Under authority vested in the GSA by the Federal Property Act, and the delegation of such authority made by GSA in FPMR, § 101-47.302-2, the Department of the Army is designated as the disposal agency for the following property:

(a) Leases, permits, licenses, easements, and similar real estate interests held by the government in non-Government-owned property (including Government-owned improvements lo-

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cated on the premises), except when it is determined by either the holding agency or GSA that the Government's interest will be best served by the disposal of such real estate interests together with other property owned or controlled by the Government, that has been or is being reported to GSA as excess; and

(b) Fixtures, structures, and improvements of any kind to be disposed of without the underlying land.

§ 644.473 Methods of disposal.

Excess buildings and other improvements may be disposed of by the following methods:

(a) By demolition for utilization of salvage materials in the overall Army or Air Force construction or maintenance program. Screening with other military departments is not necessary for this purpose.

(b) By transfer to another Federal agency.

(c) By assignment to the Department of HEW for disposal for health or educational purposes pursuant to section 203k(1) of the Federal Property Act (FPMR 101-47.308-4).

(d) By sale intact for removal from site to the most appropriate of the following, according to the circumstances:

(1) Eligible public agencies (§§ 644.400 through 644.443 and §§ 644.540 through 644.557).

(2) Boy Scouts of America (§§ 644.540 through 644.557).

(3) Military chapel buildings and chapel equipment to nonprofit organizations for use, first as a shrine or memorial and, second as a denominational house of worship.

(4) Owner of the underlying land as a part of restoration settlement where disposal of a leasehold is involved.

(5) An emergency plant facilities contractor.

(6) The general public, through competitive bidding, unless special circumstances warrant a negotiated sale for a specific purpose.

(e) By donation, abandonment or destruction.

§ 644.474 Determining method of disposal.

DE's are designees of the Chief of Engineers under AR 405-90 to determine the method of disposal authorized by law or regulations which is most advantageous to the Government. Where alternatives are presented, there will be an affirmative finding that the method of disposal approved is most advantageous. In the exercise of this authority, due consideration will be given to the effect of particular methods of disposal on safety and sanitation in the area, the proposed or probable future utilization of Government-owned sites by the Government, or in the case of leased lands, the restoration obligations of the Government under the lease. In order to assure consideration of these factors, disposals by transfer to other Government agencies or by sale intact will be brought to the attention of the installation commander or his representative prior to initiation of disposal action. Reasonable requirements for site clearance consistent with the foregoing criteria should be favorably considered and disposal conditioned accordingly, notwithstanding the fact that such action may result in a greater burden to transferee agencies or, in the case of disposal by sale intact, may result in a reduction in the monetary return which might be reasonably expected in a sale involving less stringent site clearance requirements. DAEN-REM will be informed of any instances of excessive or unreasonable requirements with respect to site clearance. The DE will determine by inspection and survey the method to be used in disposal of buildings and improvements.

§ 644.475 Excessing Army military and Air Force property.

The procedures for placing buildings and improvements in excess status are set forth in AR 405-90 and AFR 87-4. In instances of land acquisition where buildings and improvements were acquired incident thereto, DEs are designated by the Chief of Engineers under AR 405-90 to make disposition of this property. Coordination with the installation commander concerned is required. When, under AFR 87-4, the responsible DE is called upon by the Air Force Command to furnish an estimate of the value of buildings and improvements for the purpose of determining the approval authority for excessing the property, no formal appraisal will be made. If, in his opinion, the total property exceeds a value of $50,000, he will furnish only a rough estimate of its value in round figures. If the property is, in his opinion, of a value of $50,000 or less, he will limit his statement to this fact and will not specify an estimated valuation.

§ 644.476 Excessing civil works property.

The DE are authorized to approve the disposal of buildings and improvements acquired incidental to the acquisition of land in reservoir areas, regardless of the original cost thereof, when they are in the way of authorized construction or when the land upon which they are located is to be permanently or frequently inundated. DEs may authorize the disposal of buildings and other improvements in any one or more of the following categories, which are located on lands which are not excess and which are not expected to become excess, and the sale is to be made after advertising:

(a) Buildings or improvements on land acquired by the Government determined to be available for disposal pursuant to ER 735-2-1 (Property Accounting Procedures-Civil).

(b) Buildings or improvements which cannot be kept in repair at a reasonable cost.

(c) Buildings or improvements which are dangerous to life or likely to damage adjoining structures or have become hazardous or nuisances.

(d) Buildings or improvements which are damaged or unsuitable for public service.

(e) Buildings or improvements constructed by the Federal Government which occupy or interfere with sites for new construction or for other civil works purposes.

(f) Temporary buildings or improvements which have served the purpose for which they were constructed.

§ 644.477 Civil works property—reimbursement of appropriation.

Under Title 33, United States Code, Section 558, the proceeds from a sale or transfer of buildings or improvements may be credited to the appropriation for the work for which the property was acquired. Buildings or other improvements, including timber, on non-excess land come within the purview of this law. For further instructions on disposition of proceeds, see § 644.322.

§ 644.478 Demolition of buildings and other improvements for utilization of salvage material.

With respect to DA property, demolition may be undertaken by the DE of buildings on non-excess land made available for disposal, when the salvage is to be used in construction or maintenance work by the Corps of Engineers or upon specific request from another service where funds for the purpose are made available. Real Estate funds will not be used for such demolition. Determination of practicability for use of buildings or improvements in authorized new construction at other sites or for salvage of materials will be made by the DE in accordance with existing instructions relating to use of materials in new construction. Where restoration of leased premises is being performed, it is the responsibility of the Corps of Engineers to perform the necessary demolition work as part of the restoration obligation, as set forth in §§ 644.444 through 644.471. Demolition may be accomplished under contract when special or expert services are required for removal of certain types of structures and funds are available therefor. Unused salvage materials will be turned over to redistribution and salvage officers for redistribution or disposal in accordance with existing regulations pertaining to personal property. The relocation of buildings or improvements on the same installation or for re-erection at another installation is not to be accomplished as a real estate function (AR 420-70). Further, it is provided in AR 420-70 that demolition of buildings or improvements where retention of the salvage for use at the installation is approved, or where no requirement or market is found for buildings or improvements approved for disposal by the Corps of Engineers, is a facilities engineering responsibility. Pursuant to AFR 87-4, disposal of AF buildings and improvements by sale will be accomplished by the Corps of Engineers, but all disposal of such property by salvage will be accomplished by the base commander.

§ 644.479 Authority for transfer of buildings and improvements to other Federal agencies.

Buildings and other imporvements which have been screened for defense requirements, as outlined in §§ 644.333 through 644.339, may be transfered to another Federal agency as hereinafter outlined. The authority for the transfer of such property to other Federal agencies is outlined in §§ 644.400 through 644.443. The responsible DE is authorized to transfer buildings or structures for removal from the site, which have been made available for disposal by proper authority, upon receipt of a request signed by an official of another Federal agency.

§ 644.480 Procedure for transfer.

Transfer of buildings to other Federal agencies will be accomplished by DD Form 1354. An estimate of value will be shown on DD Form 1354, Transfer and Acceptance of Military Real Property, or other forms used and, in the case of transfer without reimbursement, the following footnote will be made: "Transfer to (Department or Agency), adjustment of funds not required." When the transfer is made at the direction of GSA, an explanation therefor will also be made on the form. Buildings and other improvements which are reported to GSA for screening against requirements of other Federal agencies (§§ 644.348 through 644.367) will be transferred to another Federal agency only at the direction of GSA and for the amount of reimbursement, if any, determined by GSA. Buildings and improvements which are not required to be reported to GSA will be screened against requirements of other Federal agencies by the responsible DE as provided in §§ 644.333 through 644.339. Upon request by a Federal agency for transfer of such property, the responsible DE will determine the amount of reimbursement, if any, in accordance with the criteria outlined in §§ 644.400 through 644.443.

§ 644.481 Responsibility of transferee.

Where buildings or other improvements are on lands leased to the United States, the agency requesting the buildings will be expected to remove the building and restore the premises, as required by the terms of the lease, or to accept an assignment of the lease together with all obligations thereunder. Where the buildings or other improvements are to be removed from non-excess land, the transferee agency will be expected to perform reasonable site clearance as may be required by the commanding officer.

§ 644.482 Assignment to Department of HEW or successor agencies.

Pursuant to delegation of authority contained in FPMR, § 101-47.308-4, as set forth in §§ 644.400 through 644.443, the responsible DE may assign buildings or other improvements made available for disposal and not required for Federal purposes to HEW upon receipt of request therefore from the appropriate regional representative of that department for disposal for public health or educational purposes. Assignments will be effected by letter addressed as indicated in § 644.483. Further, pursuant to delegation of authority the Department may disapprove within 30 days after notice from HEW, any transfer of property proposed to be made by that agency for such purpose. The DE will be guided by the policy set forth in §§ 644.400 through 644.443 in regard to the delegation to disapprove transfers by HEW.

§ 644.483 Notification of Department of HEW or successor agencies.

When buildings or other structures are reported to GSA for screening pursuant to §§ 644.348 through 644.367, the Reports of Excess are available to HEW by the Regional Office of GSA, and no notice of the proposed disposal need be given by the DEs. Where buildings and other structures are not reported to GSA simultaneously with circularization of other Federal agencies, HEW will be notified in writing of the availability of such structures. Such notification will be addressed to the appropriate field representative of HEW, and will include the following information:

(a) A brief description of the buildings and improvements, including dimensions of buildings, types of construction, and demountable characteristics, if any.

(b) The extent of building site clearance expected.

(c) That the improvements must be removed and site clearance completed within a specified definite period from the date of assignment to HEW (usually 60 to 90 days, depending upon the size of the removal operation).

(d) When improvements may be inspected.

(e) That the improvements will be withheld from advertisement for bids for a period of 20 days from the date of the notification, unless the office submitting the notification is sooner informed in writing that such property is not needed for school, classroom, or other educational use or for use in the protection of public health, including research. If within the 20-day period, notice is received of a potential need, the property may be held an additional 45 days until a certification of need or request for assignment is received.

§ 644.484 Procedure for disposal through the Department of HEW or successor agencies.

During the period held, action preparatory to the publication of Invitations for Bids and Specifications of Sale of Buildings and Improvements will be taken in order to minimize the time lapse between the expiration of the 20-day period and the beginning of the sale procedure. Inquiries received prior to the expiration of the holding period from state or local agencies or qualified organizations seeking the purchase of available improvements for health or educational purposes, will be referred to the appropriate field representatives of HEW.

(a) Final disposal is not effected until the improvements have been transferred by HEW to an eligible recipient. Therefore, in the letter of assignment, HEW will be requested to furnish to the responsible DE, three copies of the sales contract. One copy of the contract will be forwarded to the officer accountable for the property, together with a certificate of performance upon completion of the operation (the latter to be furnished by the HEW contracting officer), and one copy will be furnished to the property auditor charged with periodic audit of the property records.

(b) Should HEW fail to consummate disposition of the improvements after assignment to it and request cancellation of the assignment, the assignment may be cancelled by a letter of cancellation and appropriate disposition of the improvements affected. If there is an excessive number of such requests, DAEN-REM will be informed in order that corrective action may be requested of HEW.

§ 644.485 Sale of buildings and other improvements.

Buildings and other improvements made available for disposal by competent authority and not needed for further Federal utilization, or assigned to HEW, will be diposed of by sale by the responsible DE. Sales will be accomplished in the following manner:

(a) *Sale to Lessor Where Restoration is not Required.* Where the terms of a lease do not require restoration by the Government, it may nevertheless be in the best interest of the Government to negotiate a sale of the improvements to the lessor. In such cases, the DE is authorized to negotiate such sale where the net salvage value of all improvements located on the premises involved in any one lease is less than $1,000, and the sales price is determined to be as high as can be expected under the circumstances and compares favorably with the Government estimate prepared in accordance with paragraph (d) of this section.

(b) *Sale Under Options.* All leases or other rights of occupancy will be examined to determine whether the owner of the land has an option to purchase buildings or other improvements. See § 644.486 for sale of improvements constructed under Emergency Plant Facilities or similar contracts.

(c) *Sale to Eligible Public Agencies, the Boy Scouts, and the Public.* The sales procedure, including notice to eligible public agencies and advertising, set forth in §§ 644.540 through 644.557 will be followed in the sale of buildings or other improvements.

(d) *Appraisal.* Except as otherwise provided in §§ 644.540 through 644.557 buildings and other improvements will be appraised prior to sale. Except as provided in § 644.490, appraisal will be based on the highest and best use which may be for (1) removal and use intact; or (2) for dismantling, and removal and stockpiling the salvageable material for reuse or sale.

§ 644.486 Disposal of buildings and improvements constructed under emergency plant facilities (EPF) or similar contracts.

Procedure for the disposal of property constructed under a facilities contract on lands neither owned by nor leased to the Department is set forth as follows:

(a) *By Using Service.* Disposal of structural components as well as equipment may be accomplished by the using service. The term "structure" is defined to mean plant equipment which:

(1) Is held under a facilities contract of the Department;

(2) Is not readily severable;

(3) Is a separate building or a complete structural addition to a building in which the Government otherwise has no interest, such as a wing, and in which a defense contractor carries on part or all of his defense production.

(b) *By the Corps of Engineers.* Where disposal of structures, as well as other plant equipment located within such structure, is to be accomplished by the Corps of Engineers, instructions will be issued as to the extent to which the Corps of Engineers will participate in such action. Subject to special instructions by DAEN-REM, the following coordinated actions will be taken:

(1) The using service will report to the Corps of Engineers the property which is excess to the Department's needs.

(2) The excess directive report will include the designation by name and address of a responsible officer of the using service to join with the DE concerned as a representative of the Chief of Engineers. These two representatives will meet with the contractor within seven days of their appointment to determine his interest in acquiring all or any part of the facilities. This determination will be made in the shortest possible time.

(3) The meeting with the contractor will promptly establish those facilities to be retained by the contractor and those to be declared excess. Waiver of existing options will be obtained where necessary.

(4) Equipment that is of no interest to the contractor will be disposed of by using service in accordance with applicable regulations.

(5) Custody of and accountability for the entire facility remains with the using service until other arrangements have been completed.

(6) The Corps of Engineers will complete negotiations for property to be retained by the contractor as rapidly as possible.

(7) When an agreement has been reached with the contractor, the DE or his contracting officer may execute the supplemental agreement to the lease or facilities contract transferring improvements, including machinery and equipment as a unit. Authority for the transfer should be recited in the supplemental agreement. In the case of a supplemental agreement to a facilities contract, authority will be obtained from the using service through its local representative for the DE or his contracting officer to sign the supplemental agreement transferring the improvements, including machinery and equipment to the contractor. (Figure 11-18 in EP 405-1-2 is the suggested format for Supplemental Agreement to Emergency Plant Facilities Contract.)

(8) Upon completion of negotiations, the responsible DE will issue instructions to the using service to dispose of equipment not included in the final negotiations in accordance with applicable regulations. Accountability for the property will be transferred at this time to the new owner or, in the case

of real property retained by the Department, to the Corps of Engineers.

(9) Property not disposed of to the contractor will be disposed of in the same manner as improvements located on surplus leasehold property.

§ 644.487 Procedure for disposal of surplus chapels.

By direction of the President and pursuant to GSA and Army regulations, special procedures have been established for disposal of chapels. Surplus chapels must be segregated from other buildings for sale intact, separate and apart from the land, for use as shrines, memorials, or for religious purposes. Where the chapel is located on surplus land and it is determined the chapel may properly be used in place, a suitable area of land may be set aside for such purposes and sold with the chapel (§ 644.430).

§ 644.488 Soliciting applications for purchase of chapels.

Promptly upon receipt of an approved DA Form 337 (Request for Approval of Disposal of Building and Improvements) or AF Form 300, the DE will solicit applications by public advertising. Advertising will consist of publication of notice in newspapers, paid advertising when necessary, posting of notices in public places, and mailing of invitations to all known local churches. A period of thirty (30) days will be allowed in which to file written applications. Instructions will provide that the applicant will give his name, address, and denomination if applicable. The advertisement will describe the chapel, give its location, terms and conditions of sale, and the time and place where application must be filed. The advertisement will also state that the sale price will be made available upon request of interested parties, and that the Chief of Chaplains will select the purchaser. To assist that office in making a recommendation, the following information should be included in applications for the purchase of chapels:

(a) Purpose and intent of the use of the chapel.

(b) Facilities currently being used by the church/organization applying.

(c) Membership size of the church/organization.

(d) History of the church/organization and when established locally.

(e) Denomination and/or organization.

§ 644.489 Conditions of sale of chapels.

When sold under the provisions of § 644.490, chapels shall be sold subject to the condition that during their useful life they will be maintained and used as shrines or memorials, or for religious purposes, and not for any commercial, industrial, or other similar use. The contract or deed of sale will provide further that in the event the purchaser fails to maintain and use the chapel for such purposes there shall become due and payable to the Government the difference, if any, between the appraised fair market value of the chapel, as of the date of the sale, without restriction on its use, and the price actually paid. This difference should be figured at the time of sale and included in the contract of sale or deed of conveyance.

§ 644.490 Determining price and provisions of sale for chapels.

(a) *Price.* The sale price of the chapel structure in the case of sale for use as a shrine, or memorial, or denominational house of worship, will be at its fair value in the light of the conditions imposed relating to its future use, and the estimated cost of removal from the site. Appraisals made to establish the price of specific chapels will be predicated on:

(1) The fair value of the material in place, less the cost of dismantling, removal of the material to the outside limits of the installation, and the cost of restoring the site.

(2) The restrictions imposed on the future use of the chapel with due regard to the difference between the fair value price obtainable in the open market and that which might be obtainable in the limited market to which sale is restricted.

(3) In addition to the criteria set forth in paragraphs (a)(1) and (2) of this section cognizance will be taken of the prevailing prices of chapels being sold by other disposal agencies within

the general area in which chapels are being disposed of by the Corps of Engineers.

(b) *Provisions of Sale.* (1) Disposal of chapels which are not excess or surplus will be conditioned on the removal of the chapels from the premises. In the disposal of chapels located on excess or surplus leased land, no commitments will be made to purchasers for the continued use of utilities and services (sewer, water, electric, fire protection, guarding). Arrangements may be made between the lessor of the premises and the purchaser to leave the chapels in place, provided the lessor releases the Government from any and all obligations to restore the premises occupied by the chapel.

(2) Care will be exercised that, prior to the disposal of the chapel, equipment such as organs, hymn books, and other ecclesiastical furnishings have been removed or shipped in accordance with applicable regulations.

(3) All copies of the contract evidencing the sale of chapels will be accompanied by copies of the instructions, if any, received from the Chief of Chaplains authorizing the disposal. If no such instructions have been received, the DE will attach a statement that in the absence of instructions, all known interested parties have been contacted and that the disposal has been made after due consideration of applications, the uses to be made of the chapel building and the need therefor.

§ 644.491 Coordination with the Chief of Chaplains.

The DE will submit applications for the purchase of chapels to DAEN-REM, who will request the Chief of Chaplains to select the purchaser and advise DAEN-REM of his selection. Where no applications are obtained as a result of the advertising, the DE will so advise the Chief of Chaplains, reporting steps taken to obtain a purchaser, and recommending that the chapel be sold without conditions, in the same manner as provided for disposal of other buildings. If the Chief of Chaplains does not approve this recommendation or issue other appropriate disposal instructions within a period of 60 days, DAEN-REM will be informed.

§ 644.492 Report on disposal of chapel.

As soon as practicable after the sale has been consummated, notification of disposal of chapels will be made by the DE direct to the Chief of Chaplains, with a copy to HQDA (DAEN-REM) WASH DC 20314, by letter, which will contain the following information:

(a) Location and brief description of chapel or chapels.

(b) Reference to disposal instructions, if any, received from the Chief of Chaplains.

(c) Identity of purchaser and price paid.

§ 644.493 Release of restrictions on chapels sold.

Where the purchaser fails to maintain and use the chapel in accordance with the conditions of sale, or the purchaser requests release of the conditions, the facts will be reported to DAEN-REM with appropriate recommendations. DAEN-REM may release the purchaser from the conditions of sale without payment of a monetary consideration upon a determination that the property no longer serves the purpose for which it was sold, or that such release will not prevent accomplishment of the purpose for which the property was sold.

§ 644.494 Donation, abandonment or destruction.

(a) *General.* Improvements may be abandoned, destroyed or donated to a public body, upon a finding in writing by the DE (but in no event shall such finding be made by the official directly accountable for the property) that the property has no commercial value or that the estimated cost of its continued care and handling would exceed the estimated proceeds from its sale, or that abandonment or destruction is required by military necessity, or by considerations of health, safety or security.

(b) *Finding of Fact.* The finding will be prepared as a separate document headed: Finding of Fact for ——————— The finding will be sufficiently complete within itself to justify the decision to donate, abandon, or destroy the property proposed, without outside reference. It will be drafted to provide, where the finding is made by the District Engineer, for approval by the Division Engineer. Finding of fact concerning property which had an original cost in excess of $500,000 requires the approval of DAEN-REM. A copy of each such finding, so approved, will be forwarded by the DE to the regional office of GSA.

§ 644.495 Donation to a public body.

A public body, as defined by GSA for this purpose, means any State, territory or possession of the United States, any political subdivision thereof, the District of Columbia, any agency or instrumentality of any of the foregoing, or any agency of the Federal Government. Property as to which findings of fact have been made, may be donated to a public body.

§ 644.496 Abandonment.

Abandonment, as used herein, has reference to cases where the lessor or a permittor Government agency is unwilling to accept transfer of buildings or improvements in lieu of restoration, but is willing to permit the Department to leave buildings or improvements having no net salvage value on their premises. It is desirable to transfer title of or accountability for improvements having no net salvage value to lessors or permittors instead of obtaining their consent to abandon such improvements. Abandonment as authorized herein will not be a means for dropping accountability or responsibility for maintenance of improvements on non-excess land.

§ 644.497 Destruction.

Disposal by the Corps of Engineers, as authorized in AR 405-90, does not contemplate expenditure of funds for destruction of improvements which have no sale or salvage value. Accordingly, where such improvement have been approved for disposal by the Corps of Engineers, they will be referred back to the appropriate Army of Air Force command for disposal action under AR 405-90 or AFR 87-4 as appropriate. However, improvements with little or no salvage value may be included in the same item with other improvements being offered for sale which are more attractive improvements without an expenditure of Government funds.

§§ 644.498—644.500 [Reserved]

DISPOSAL OF STANDING TIMBER, CROPS, AND EMBEDDED GRAVEL, SAND AND STONE

§ 644.501 Authority.

(a) *Crops.* Crops are defined as personal property in FPMR § 101-47.103-12 and are disposed of under FPMR § 101-45.309-1 (Sale, Abandonment, or Destruction of Personal Property). The Corps of Engineers does not dispose of crops on military lands. However, when lands are in the custody of the Corps for construction purposes, the Corps will dispose of crops thereon.

(b) *Standing Timber, Embedded Gravel, Sand or Stone.* These are defined as real property (FPMR § 101-47.103-12(c)). The holding agency is designated as disposal agency for standing timber and embedded gravel, sand, and stone to be disposed of without the underlying land. (FPMR § 101-47.302-2).

(c) *Small Lots of Standing Timber.* In accordance with AR 405-90, installation commanders are authorized to sell small lots of standing timber with a value not more than $1,000 that are in conformity with the installation Forest Management Plan. Public notice is required of the availability of the timber for sale. The total of such sales in any one calendar year will not exceed $10,000.

(d) *Restriction on Removal of Sand, Clay, Gravel, Stone and Similar Material.* The Army is without authority to remove such products from public domain land located within the military installation where the material is to be used off the installation. With permission of the Secretary of the Interior, such material may be removed pursuant to 30 U.S.C. 601. In such cases, DAEN-REM will obtain the necessary permission.

§ 644.502 Determination of excess status.

(a) *Military.* The procedure for excessing and disposal of standing timber and embedded gravel, sand and stone is outlined in AR 405-90. The procedure for the determination of availability of timber for disposal is outlined in AR 420-74.

(b) *Civil Works.* (1) When the DE believes that standing timber, embedded gravel, sand or stone (whether designated for disposition with the land or by severance and removal from the land) is excess to requirements, he will submit a recommendation to DAEN-REM for approval. The DE is authorized, however, to dispose of standing timber or other forest products required to be removed incident to construction and operational requirements of the project; that which is generated incident to recreational development or the management of public park and recreational areas or wildlife management areas; or that which is generated in accordance with approved forest management supplements to the approved Master Plan (ER 1130-2-400). As far as practicable, high grade species in short supply will not be disposed of, but will be retained for possible defense requirements. When the amount for sawtimber under the above criteria available for disposal exceeds 5,000,000 board feet, request will be made to DAEN-REM, for determination of whether there are any defense requirements for the timber. The request will include an estimate of the amounts by species and the range in sizes. All timber disposals, except those involving timber below the project clearing line or in construction sites, will be compatible with the planned use of the areas for the purpose to which they are allocated in approved Master Plans and such disposals will be incidental to that use. The DE may authorize the disposal of growing crops when their disposal is deemed necessary to prevent waste.

(2) Under the provisions of section 5 of the act of 13 June 1902, as amended, (33 U.S.C. 558), proceeds from disposal of these items on civil works property may be returned to the appropriation.

§ 644.503 Methods of disposal.

Standing timber, crops, sand, gravel, or stone-quarried products, authorized for disposal in accordance with the foregoing, will be disposed of by transfer to another Federal agency or by sale.

§ 644.504 Disposal plan for timber.

The DE take appropriate action to assure that construction contractors are not authorized, in the clearance of construction sites, to burn or otherwise destroy merchantable timber unless circumstances exist which preclude sale or salvage. In preparing for disposal of timber, a disposal plan will be prepared which will include the following:

(a) Live timber and merchantable dead timber will be marked for cutting in accordance with the land management plan, Master Plan, or forestry supplement thereto, and cutting will be limited to the timber so marked. The disposal plan will contain sufficient information in this respect to permit preparation of specifications for inclusion in the invitation for bids.

(b) Utilization of existing roadways and construction of new roads and saw mills should be limited to the minimum necessary.

(c) Requirement that the customary practices in elimination of fire hazards be observed with necessary specifications therefor.

(d) The installation commander will be consulted to obtain his desires in connection with security measures, and other matters affecting the installations, and the requirements of such measures will be set forth specifically.

(e) Any measures considered necessary to protect timber and young growth not marked for cutting will be specified.

(f) Where an appraisal is required, the appraisal report will be prepared by a competent forester. The report will indicate the number and size of each species and classification of trees to be cut; the estimated board feet in log scale measurement; linear estimates of pole timber, and amount of cord wood. The appraiser should indicate in the appraisal report what, in his opinion, should be acceptable as a minimum price for different types of timber, as well as a total or lump sum estimate for the whole. Methods of administration and sale of timber by the Army or Air Force should follow the same general rules employed by the U.S. Forest Service in its sales and forestry practices. U.S. Forest Service personnel may be available for this work, if desired, on a reimbursable basis, provided the size of the area in question and the location render such arrangements feasible.

(g) Minor sales, involving lots with an estimated value of $1,000 or less, may be accomplished by the reservoir manager on civil works projects under general guidance issued by the DE Real Estate Branch. In such minor sales, two or more informal bids, in writing, will be obtained, if possible. If only one bid can be obtained, the proposed sale will be posted for a period of ten (10) days.

§ 644.505 Disposal plan for embedded gravel, sand or stone.

Prior to offering sand, gravel, or stone for disposal, a disposal plan will be prepared, which will include the following:

(a) Control of transportation facilities which will limit use of roads and construction of new roads to the minimum necessary.

(b) Security measures established by consultation with the installation commander to properly protect Government property and other interests of the Government.

(c) Where applicable, the depth or level to which the material may be removed, and any restoration of the site after removal.

(d) Specifications as to methods to establish amount of material removed for the purpose of payment.

(e) With certain exceptions as discussed in paragraph (d) of § 644.544 an appraisal report will be prepared by a person familiar with the material involved and the operations for mining, quarrying or otherwise removing it, giving the type or grade of material involved and an opinion as to the minimum price that should be acceptable.

§ 644.506 Procedure for transfer to another Federal agency.

As soon as possible after standing timber, embedded sand, gravel, or stone are made available for disposal, other Federal agencies having activities within the vicinity of the location of the property and which, in the opinion to the responsible DE, may desire transfer of the property will, to the extent practicable or economical, be notified of the availability of the property for disposal. Such notification should include the following: information concerning how arrangements can be made to inspect the property; information concerning conditions governing cutting, harvesting, mining, or removal of the property and a statement that the property will be advertised for sale upon the expiration of fifteen (15) calendar days from the date of the notification, unless a request for transfer of the property, or a statement that a request for transfer of the property, or a statement that a request therefor may be made, is received within the fifteen (15) day period. Should a Federal agency request within the fifteen (15) day period, that disposal of the property be withheld pending determination of a requirement, disposal will be withheld not longer than sixty (60) days from the date of notice of availability, unless DAEN-REM approves withholding disposal for a longer period. Disposal will not be withheld for such sixty (60) day period, extended if applicable, if to do so would interfere with construction or other necessary operations. Should a request be received from a Federal agency for transfer of the property, the property will be transferred in accordance with existing procedures without reimbursement except as provided by FPMR § 101-47.203-7. If no request for transfer is received, the property will be considered surplus and disposed of by one of the methods outlined in §§ 644.507 and 644.508. The foregoing instructions do not apply to land clearance operations performed either by contract or force account. It applies only to those cases where it is proposed to offer property for sale.

§ 644.507 Sales.

DEs will be governed by the general procedure set forth in §§ 644.540 through 644.557 in selling standing timber, growing crops, embedded sand or gravel or stone products.

§ 644.508 Agreement with Small Business Administration (SBA) on sale of timber.

The Department of Defense has entered into an agreement with the SBA for the development of a program of assistance for small concerns operating in the timber business. This agreement is published for compliance as Figure 11-19 in EP 405-1-2. In the implementation of this agreement, the DE will cooperate with field representatives of SBA to the fullest extent compatible with efficient administration of the Army's timber disposal program.

§ 644.509 Status as small business.

(a) *Definition*. Each invitation for bids for the sale of timber with an estimated value of $2,000 or more will contain a definition of small business and provision for self-certification of the bidder's status within its terms. A definition for use in invitations for bids on Army timber is provided in the "Certificate as to Small Business Status" (Figure 11-20 in EP 405-1-2).

(b) *Self-Certification*. 13 CFR 121.3-9(c) provides: "In the absence of a written protest or other information which would cause him to question the veracity of the self-certification, the contracting officer shall accept the self-certification at face value for the particular sale involved."

(c) *Definition for Set-Asides*. The definition of small business provided in Figure 11-20 in EP 405-1-2 omits portions of the definition prescribed by SBA regulations which are not presently applicable to sales of Army timber. The omitted portions relate to sales of timber reserved for or involving preferential treatment of small business § 644.512. These portions of the definition are subject to frequent revision by SBA.

§ 644.510 Information for SBA on timber sales.

Representatives of SBA will visit District offices from time to time for purposes of coordination and assistance; to furnish names and information on prospective bidders from the SBA facilities list; and to obtain information on programmed sales of Army timber. In addition to the information which may be furnished during the course of these visits, the following items of information will be furnished to appropriate SBA field offices on each sale of timber products with an estimated value of $2,000 or more:

(a) Advice on proposed or prospective timber sales of Army timber.

(b) Copies of invitation for bids.

(c) Name of successful bidder, his status as a small business, the bid price, and an estimate of the amount of timber sold.

§ 644.511 Certificate of competency by SBA.

Section 8(b)(7) of the Small Business Act (15 U.S.C. 637(b)(7)) authorizes the SBA to certify the competency of a small business concern as to capacity and credit. In any case where timber is being sold on a credit basis, if the bid is being questioned solely on the financial ability of the bidder and the bidder is a small business concern, the DE will notify the appropriate SBA field office immediately and follow the other procedures provided by Section III of the DOD-SBA Agreement. A certificate of competency issued by SBA will be honored in such cases.

§ 644.512 DA-SBA joint set-aside determination.

Section 15 of the Small Business Act (15 U.S.C. 644), provides that where certain joint determinations are made by the SBA and a disposal agency, the award of a contract for the sale of Government property shall be made to a small business concern. Section IV, Joint Set-Aside Determination of the DOD-SBA Agreement implements Section 15 of the Small Business Act. It is not anticipated that SBA will recommend that Army timber be reserved or set aside for sale to small business concerns on an exclusive or preferential basis. In the event recommendations on set asides of Army timber are received from SBA field offices, the SBA recommendations will be forwarded promptly to HQDA (DAEN-REM) WASH DC 20314 with DE comments and recommendation.

§§ 644.513—644.515 [Reserved]

CLEARANCE OF EXPLOSIVE HAZARDS AND OTHER CONTAMINATION FROM PROPOSED EXCESS LAND AND IMPROVEMENTS

§ 644.516 Clearance of Air Force lands.

The Chief of Engineers has no responsibility for inspecting or clearing excess Air Force land of explosives or chemical/biological contaminants. When a target or bombing range, or other land under the control of the Department of the Air Force, which might be contaminated with explosives or other harmful or dangerous substances, becomes excess to Defense requirements, the appropriate DE will obtain a certificate as to the extent of contamination and clearance thereof from the Commander, Air Force Logistics Command (AFLC), Wright-Patterson Air Force Base, Ohio 45433. The Corps of Engineers will continue to be the agency with which the disposal agencies, purchasers, and former lessors will communicate when explosives or objects resembling explosives, are discovered on the land after dispostion has been effected. The AFLC, upon request of the DE, will neutralize or remove such objects or substances and make a report to the requesting agency or person. See § 644.535 for support required of the Corps.

§ 644.517 Clearance of Army lands.

The responsibility for performing clearance of ordnance contaminated excess Army military real property is placed upon and remains with the using command. That command, after completion of the clearance work, will furnish the DE a "Statement of Clearance" (Appendix E, AR 405-90) and a record of the clearance work performed. In addition to the Statement of Clearance, the following information will be furnished to the DE upon completion of the neutralization:

(a) Records of the neutralization work performed, including statement of methods employed.

(b) List of dangerous and explosive materials removed.

(c) Number and names of demolition technicians employed.

(d) Other data that may be pertinent in the defense of any suit or claim that might subsequently arise as a result of civilian occupancy.

§ 644.518 Determination of categories.

Prior to making a recommendation for excess, the state of contamination of the property must be determined by the installation commander as either of the following:

(a) *Category One.* Those lands such as ammunition plants, storage, test, impact and training areas, bombing or target ranges, which may contain explosives or unexploded ordnance. The report will include proposed methods of neutralization and the costs thereof.

(b) *Category Two.* Those lands or buildings which are suspected of being contaminated with radiological, industrial-military chemicals, or explosives. The U.S. Army Toxic and Hazardous Materials Agency (USATHAMA), Aberdeen Proving Ground, Maryland 21010, will be requested to determine if the land contains any of the above contaminants, to determine the extent of the contamination, and to decontaminate, if necessary before such property is reported for disposal.

§ 644.519 Responsibilities.

(a) *Category One.* The DE, as designee of the Chief of Engineers, will satisfy himself that the clearance work, as certified in the Statement of Clearance, has been performed and that such clearance complies with the requirements of this section. If the DE determines that the completed clearance work is not sufficient, he will request the using command to perform the necessary additional clearance. The Department of Defense Explosives Safety Board (DDESB), has responsibility for reviewing and approving, from an explosive safety veiwpoint, clearance reports for real property declared excess and offered for disposal. DDESB should be consulted for review and analysis of accomplished clearance work for Category One property when determinations of adequacy are not within the capacities of the DE. Requests, fully documented, for review and/or analysis by the Board may be forwarded to DAEN-REM for submission to the Board. Department of Defense procedures include staff study of all proposed excess reports by the Board before grant of "Prior Approval" for those disposals requiring reports to the Armed Services Committees (10 U.S.C. 2662). When the clearance work has been satisfactorily performed, disposal action will be continued as set forth in this Subpart F. If the DE determines that further clearance work is necessary to render the land safe for use but that such further clearance work is not economically justified, he will make a report to DAEN-REM with his recommendations and pertinent supporting data. The report will include a statement of the current status of the excess action.

(b) *Category Two.* The U.S. Army Toxic and Hazardous Materials Agency (USATHAMA) is responsible for the identification and containment and elimination of all toxic and hazardous materials, and related contamination on all and/or buildings where an excessing action is planned. USATHAMA will conduct the survey and assessments of all proposed excess property to establish the type and quantities of contaminants and then plan, direct and control the program to decontaminate and clean up the property. Following the completion of the decontamination clean up program, USATHAMA will prepare a clearance statement stating the property has been cleared of all toxic and hazardous materials reasonably possible to detect using present state-of-the-art methodology, and it will provide any exceptions or restriction for utilization of the property. Clearance statements which identify contaminations of ammunition and explosives will be submitted to the DDESB for review. Category Two items may include chemical munitions or agents, liquid propellants and pyrotechnics. The clearance statement will be forwarded through the Major Army Command (MACOM) to DAEN-REM.

(1) Decontamination of Category Two real property will comply with the requirements of TB 700-4 (Decontamination of Facilities and Equipment). The Bulletin provides general policies, responsibilities and procedures applicable whenever potentially contaminated facilities are disposed of to other Government agencies, qualified users in industry, or to the general public.

(2) The degrees of decontamination are designated in TB 700-4. Contaminated real and personal property excessed for disposal shall be decontaminated to XXXXX before it can be removed from the Government premises, or transferred to nonqualified Government or industry users.

§ 644.520 Contaminated industrial property.

(a) GSA may arrange to sell contaminated chemical or other industrial plants to a purchaser whose operations will result in the same type of contamination, or who agrees to perform the necessary decontamination. Any decontamination work required will be monitored by USATHAMA who will also review the completed program for adequacy of decontamination. If these arrangements cannot be worked out, USATHAMA will decontaminate the property at the request of the Office, Chief of Engineers (OCE), or the property may be withdrawn from excess and returned to the using command for care and custody.

(b) A Statement of Clearance is required for industrial property to be declared excess in order to establish a qualitative and quantitative base line for the contaminants present. In the Statement, USATHAMA will provide an adequate description of the nature and extent of the contamination. The description furnished to the DE should include the following information:

(1) Name and location of installation.

(2) Date of final clearance.

(3) Reference to attached real estate map showing locations of contaminated, cleared and restricted areas. The

map(s) will be attached to the description of contamination.

(4) Statement that the area has been cleared of toxic and hazardous materials reasonably possible to detect either by present state-of-the-art methodology or by a visual inspection.

(5) Recommendation as to whether the land or structures may be used for any purpose for which it is suited, clearly identifying any areas recommended for restricted use and listing restricted tract and building numbers.

§ 644.521 Limitations on clearance cost.

The following principles are established for determination of the financial limit of clearance operations at excess installations:

(a) *Government-owned land.* Clearance work will not be undertaken where the estimated cost thereof exceeds the value of the land after decontamination plus the estimated cost of keeping it security-fenced and posted for a period of 25 years.

(b) *Leased land.* Clearance will not be undertaken where the estimated cost, plus the cost of any other required land restoration work, exceeds the value of the land after clearance and restoration plus the estimated cost of keeping it security-fenced and posted for a period of 25 years.

§ 644.522 Clearance of military scrap.

Military scrap can contain or be contaminated with explosives, chemicals, and other hazardous materials. The primary consideration in determining whether scrap metal will be removed should be the safety of persons coming on the land in question and, secondarily, the prevention of accidents resulting from the sale and/or use of the scrap metal subsequent to the land passing from the jurisdiction of the Department. The DE will insure the removal or destruction, by using command, of all military scrap and scrap metal from lands suitable for cultivation or other subsurface operations. In the case of land unsuitable for cultivation or other subsurface operations, all military scrap will be removed or destroyed and scrap metal removed, if it is reasonably possible to do so. Cases where it is considered impracticable to remove the scrap metal, will be reported to DAEN-REM for final decision. In such instances, pertinent data and the recommendation of the DE will be furnished. Disposition of military scrap or scrap metal by dumping into inland waters or by land burial in other than an approved landfill is prohibited.

§ 644.523 Restricting future of artillery and other ranges.

Experience indicates that, on ranges where high explosive projectiles have been fired or dropped, such as artillery, bombs, mortars, rockets, grenades, and the like, it is impossible to make certain that land in impact areas is absolutely safe for unrestricted use. Such impact areas receive a high concentration of fire, and the properties of these projectiles are such that many duds are deeply buried. Depth of burial, as well as the concentration of fragments or components, will affect the dependability of mine detectors. Since there is no known definite period within which such projectiles will become inert through weathering and corrosion, such contaminated areas can be safely released for restricted use only, even after decontamination work has been carried to its practicable limit. Such restrictions will usually be in the form of a recommendation that the land be restricted to surface use only. Restrictions will be based solely on the type and/or extent of contamination. If land is contaminated to such a degree that it is considered it cannot be rendered safe for any use, disposal action will be suspended and the facts will be reported to DAEN-REM-C with the DE recommendations.

§ 644.524 Reporting contaminated land to the General Services Administration.

Contaminated areas, except industrial properties as covered by § 644.520 will not be included in a Report of Excess to GSA until such time as the affected areas have been cleared by the using command to the satisfaction of the DE and a Statement of Clearance has been received. If an exception is granted and the Department of the Army, with the concurrence of GSA, reports contaminated nonindustrial property excess, the report of excess will include statements concerning:

(a) The extent and type of such contamination;

(b) Plans for decontamination, if any; and

(c) The extent to which the property may be excessed without future decontamination.

§ 644.525 Statement of clearance in reporting excess property to GSA.

The Report of Excess will include the Statement of Clearance furnished by the using command (§ 644.517). The record of the clearance work performed by the using command will not be included in the Report of Excess but will be preserved in the permanent records of the DE. It is anticipated in these cases that the disposal agency (GSA) will, at the time the land is offered for sale of lease, give public notice of the circumstances surrounding its past and future restricted use. Included in such notice will be the statement that the Department of the Army is willing to remove or destory any potentially dangerous materials discovered at any time in the future, subject to the availability of funds for this purpose.

§ 644.526 Reporting target ranges.

All Reports of Excess to GSA covering lands which have been used as target ranges of any kind will contain an affirmative or negative statement in regard to contamination. This will be by appropriate schedule and reference thereto in the following manner:

(a) If the statement is negative, it will declare that no explosive or other contaminating materials were used or stored on any portion of the installation.

(b) If the statement is affirmative, reference will be made to appropriate schedules of the Report of Excess containing statements of clearance on the installation, or portions thereof.

§ 644.527 Recording Statements of Clearance.

On property disposals for which the Corps of Engineers is the disposal agency, the DE will have the Statement of Clearance recorded, if possible, as part of the permanent history of the property involved, with the proper county land record office. A copy of the report of clearance work performed will be furnished DAEN-REM and DAEN-REP.

§ 644.528 Return of contaminated leased land to owners.

Where leased land has been contaminated, whether excess to military requirements or being used, it may often prove advisable and economical to acquire the fee to such properties. Prior to considering the return of contaminated leased land to owners, District Engineers will assist installation commanders in preparing an analysis as a basis for recommendation to acquire or not acquire such areas. In the case of recommended restriction of use, notice should be given the lessor as described in § 644.525.

(a) Where such a restriction reduces the value of the land, the Department will, if consistent with the terms of the lease, pay damages equal to the reduction in value as of the effective date of termination.

(b) As stated in § 644.525, the owner should be advised that the Department is willing to remove or destory any potentially dangerous materials that may be discovered in the future, subject to the availability of funds.

§ 644.529 Supplemental agreement with owner of contaminated leased land.

In the event that it becomes necessary to pay damages to a lessor in lieu of restoration i.e., decontamination, the following clause, appropriately modified to fit the circumstances, will be made a part of the supplemental agreement terminating the lease and effecting monetary settlement in lieu of restoration. Additionally, in order to protect the Government from possible claims for damages from future purchasers, the executed supplemental agreement will, in those jurisdictions permitting recordation, be recorded by the DE thus providing legal notice to subsequent purchasers of the condition of the premises.

Suggested Clauses for Use in Supplemental Agreement

Whereas, by reason of the use made of the premises by the Government it is impossible to ascertain after completion of decontamination operations by the Government that the following described portion of land is safe for unrestricted use by the lessor (or state because of use made by Government that use of land must be restricted to grazing, etc.):

(Legal Description; utilize hachured/annotated map(s) as attachment plus legal description.)

Now, therefore, in consideration of the payment by the Government of the United States to the lessor, (Name of Lessor) , of dollars ($), representing the estimated compensation to which the lessor is entitled by reason of the loss of the unrestricted use of the above described property, the lessor hereby releases the Government from all claims for damages to property and/or injury to persons which may arise out of the existence on the premises of unexploded ammunition or chemical/biological agents. It is mutually understood, however, that for a period of 25 years from the date hereof, the Government shall, upon request of the lessor, remove or destroy any potentially dangerous materials that may be discovered on the land, provided that adequate appropriations are available to cover the cost of such service. (If use of the land is restricted to surface use, the lessor should agree and convenant, in consideration of the payment, to use the land for such purposes only.)

§ 644.530 Conditions in conveying land suspected of contamination.

The following conditions, appropriately modified to conform to local law, will be included in deeds conveying land which is, or is suspected of being, contaminated with explosive or toxic materials and is restricted to surface use: (GSA should be requested to include these conditions in deeds that they prepare.)

Whereas, said property was a part of (Name of Installation) , a military installation used for , and portions of this property were subject to contamination by the introduction into the said installation of bombs, shells and other charges (insert reference to toxic chemical/biological agents, if applicable) either below or upon the surface thereof; and

Whereas, the grantor has caused the property to be inspected and has decontaminated the said property to the extent deemed reasonably necessary, and, to the extent deemed consistent with sound economic limitations, has cleared the property of all dangerous and explosive materials and/or chemical/biological agents, reasonably possible to detect, and has made certain recommendations pertaining to the use to which the land may be devoted, and the said recommendations are contained in a statement, a copy of which is attached hereto and made a part hereof; and

Whereas, the grantor, by attaching such statement, does not intend to make, nor shall it be construed to have made, any representations or warranties pertaining to the condition of the land; and

Whereas, the hereinafter-designated grantee has entered into a contract to purchase said property with full knowledge of, and notwithstanding the foregoing recitals which are incorporated for the purpose of disclosing the former use made of the property hereinafter described; and

Whereas, by acceptance of this instrument, the grantee admits and confesses to full knowledge with respect to the facts contained in the foregoing recitals as to possible contaminated condition of the property;

Now, therefore, by acceptance of this instrument, and as a further consideration for this conveyance, the grantee here convenants and agrees for himself, his heirs, successors, or assigns, to assume all risk for all personal injuries and property damages arising out of ownership, maintanance, use, and occupation of the foregoing property; and further covenants and agrees to indemnify and save harmless the United States of America, its servants, agents, officers, and employees, against any and all liability, claims, causes of action, or suits, due to, arising out of, or resulting from, immediately or remotely, the possible contaminated condition, ownership, use, occupation, or presence of the grantee, or any other person, upon the property, lawfully or otherwise.

§ 644.531 Warning to public of danger in handling explosive missiles.

When any land which has been contaminated with explosive objects, or chemical/biological agents, is released for disposal to, or use by, the general public in addition to the clearance statement furnished to the disposal agency, the DE will publicize, to the fullest extent practicable, the possibility of contaminants remaining on the land and the inherent danger of handling explosives or other contaminants. Such publication should be in the form of articles in official news media, or posting of the premises whenever the later is considered most feasible. Such publicity should include instructions that, in the event of the discovery of an explosive missile, or an object resembling an explosive missile, or other contaminant, or in the event of an injury caused by an explosion or exposure to toxic agents, such discovery or injury should be reported immediately to the DE. An effort should be made to obtain the cooperation of local law enforcing agencies to insure the prompt reporting of an accident, or the discovery of an explosive missile. The majority of accidents are the result of the removal of explosive missiles by individuals for sale to scrap dealers. Scrap dealers in the vicinity of contaminated lands should be informed of the inherent dangers and asked to cooperate by refusing to buy military scrap from private parties.

§ 644.532 Reporting accidents.

Immediately upon receipt of information of an accident involving, or appearing to involve, explosive or chemical/biological elements remaining on, or carried from an excess or surplus installation, whether under the jurisdiction of the Corps of Engineers, other Government agency, or sold or returned to public or private owners, the DE will institute an investigation and prepare a report prescribed by AR 385-40 and OCE Supplement thereto. Further, upon determination that an accident has occurred, the former using command should be requested to send qualified explosive, chemical or biological specialists to the scene of the accident immediately, in order that proper corrective measures to eliminate future accidents may be instituted. HQDA (DAEN-REM) will be immediately informed, by teletype, of any accidents due to explosives on lands which have been used by the Department involving injuries to persons and/or animals, or damages to private property.

§ 644.533 Contamination discovered after return of land to owner, or sale.

When land has been previously declared clear of explosives or other dangerous material so as to be safe for all uses and disposed of, but is later found to have been contaminated to such an extent that, in his opinion, it is dangerous to the public, the DE will request the former using command to re-examine the land for the purpose of determining the extent to which the original Statement of Clearance should be revised and to determine the kind and cost of any further clearance work by the using command which would be required to place the property in the condition set forth in the original Statement of Clearance. If further clearance work is necessary and considered economically justified, the DE will request the using command to perform such work and furnish a new Statement of Clearance and record of the further clearance effected. If further clearance work is not considered economically justified, he will make a report thereof to DAEN-REM with his recommendations and pertinent supporting data. Recommendation for reacquisition of contaminated lands will be limited to those which involve full restrictions of both surface and subsurface uses. Where subsurface use of lands only is to be restricted, it is preferable to make compensation to the owners through claim procedure, when and if instituted by the owner on his own initiative.

§ 644.534 Return of public domain land.

(a) *General.* The procedures described elsewhere in §§ 644.516 through 644.539 to carry out the continuing responsibility of the Department of the Army to assist and advise the land holder and protect the public from dangerous substances on or in the land after release are equally applicable to public domain lands. Air Force policy and procedures are generally comparable.

(b) *Congressional.* A provision has been added to several laws enacted by Congress that upon request of the Secretary of the Interior at the time of final termination of the reservation effected by the Act, the Department of the Army shall make safe for nonmilitary uses the land withdrawn and reserved, or such portions thereof as may be specified by the Secretary of the Interior, by neutralizing unexploded ammunition, bombs, artillery projectiles, or other explosive objects and chemical agents. The intent of the provision is explained by a statement of the Committee on Interior and Insular Affairs, House of Representatives, in Report No. 279, 87th Congress, 1st Session: The committee concluded that it would be appropriate to amend the bill to designate the Secretary of the Interior to act on behalf of the Federal Government in delineating the areas to be made safe for nonmilitary use when the lands are no longer required for defense purposes. "It is expected that the Secretary of the Interior will not require the Department of the Army to proceed with expensive cleanup work in areas where there would be no direct benefit. On the other hand, it is anticipated that when potential resources or use values are such as to make dedudding or decontamination advisable, the Secretary of the Interior will identify those resources and values for the Secretary of the Army. This will permit a full and complete justification in the event that a separate appropriation therefor is required." Report No. 279 also quoted the following policy statement by the then Bureau of the Budget: ". . . requirement for decontamination should be related to a standard not only of practicability, but also to one of economic feasibility that takes into account the desired future use and value of the land to be decontaminated."

(c) *Army.* The congressional policy outlined above does not change the existing Army policy. Its principal effect is to make it clear that the Secretary of the Interior has an equal interest with the Secretary of the Army in the final decision on whether it is practicable or feasible to clear lands for return to the public domain, and the extent of clearance. No difficulties in reaching agreement with Interior in these matters are anticipated. Where large expenditures are involved it will usually be necessary to request a special appropriation, leaving the final decision to Congress. In any instance, if difficulty in reaching agreement with officials of the Bureau of Land Management (or the Secretary of the Interior) should occur, it will be reported promptly to DAEN-REM with complete background data for review and instructions.

§ 644.535 Support in clearance of Air Force lands.

Where Air Force range lands are proposed for disposal, the AFLC, in most cases, will make an economic study to determine the extent of clearance that is justified by the relative values of the property before and after decontamination. For this purpose, AF commands declaring range lands excess will submit a copy of the excess recommendation to the AFLC. Upon request, the DE will prepare and furnish a disposal planning report to the AF Logistics Command for assistance in making the economic study. The disposal planning report will include, but need not be limited to, the following:

(a) A map which depicts and annotates differing areas according to their estimated highest and best use.

(b) An appraisal report reflecting the fair market value of each of the differing areas based on their highest and best use, and based on the assumption that the lands are entirely free of dangerous materials or other contamination. AFLC will compare such evaluation with cost of decontamination work. While needed primarily in connection with the return of AF range lands to the public domain, economic studies may be made and disposal planning reports requested by the AF in other areas.

§§ 644.536—644.539 [Reserved]

SALE PROCEDURE

§ 644.540 Advertising.

(a) *Definition and Purposes.* GSA regulations require that disposal agencies shall widely publicize all surplus real property which becomes available for sale. Sales will be made to the highest responsible bidder after advertising. Advertising consists of the preparation of Invitation for Bids, the posting of copies thereof in public places, their distribution to interested persons or prospective bidders, and publication of notice of sale in newspapers where such publication is deemed advisable or is required by this Subpart F. The purpose of advertising and obtaining competition in selling Government property is:

(1) To give all qualified persons equal opportunity to bid for the property.

(2) To secure for the Government the benefits which flow from competition.

(3) To prevent criticism that favortism has been shown by officers or employees of the Government in making sales of public property.

(b) *Notice to Department of Commerce.* A condensed statement of proposed sales of surplus real property by advertising for competitive bids, except where the estimated fair market value of all the property included in the advertisement is less than $5,000, shall be prepared for publication in the U.S. Department of Commerce publications, "Commerce Business Daily." Guideline is contained in the Defense Acquisition Regulation (DAR) 1-1005.1, (formerly the Armed Services Procurement Regulation). Forward statement to: U.S. Department of Commerce, Commerce Business Daily, P.O. Box 5999, Chicago, Illinois 60680.

(c) *Procedure.* Whether newspaper advertising in addition to distribution and posting of Invitation for Bids is desirable will depend upon the value of the property and in some instances the anticipated interest in the property. The ever-changing market requires different methods or efforts to obtain the best price for the Government. The time allowed for submission of bids will depend upon the time available, usually 30 days. If available, a longer period may be desirable based on value and other factors. A shorter period may be necessary and, in an emergency, a period of less than 10 days may be allowed. However, the contracting officer should make a record of written findings to support such a decision. If the emergency is based on requirements of the using command that appear questionable, a report with recommendations should be forwarded to DAEN-REM by the most expeditious means.

(d) *Bidders Mailing Lists.* Instructions contained in procurement regulations are applicable generally for establishing, maintaining, and controlling bidders mailing lists (DAR 2-205). Generally, all proposed sales should be preceded by an advance notice, to eliminate disinterested bidders and as a measure of economy in printing and distributing voluminous Invitation for Bids. Notice to bidders will provide that their failure to respond to two successive sales offerings will result in the removal of their names from the bidders list. When time does not permit an advance notice, one copy of the Invitation may be sent to the potential bidder, which contains the following notice: "*Attention Bidders.* If interested in bidding on any or all items, three (3) additional copies will be furnished on request." The advance notice will describe the property offered and ordinarily provide that Invitation for Bids will be mailed on request or may be picked up at the installation or project at the time the property is inspected.

(e) *Inspection of the Property.* Upon request, interested persons should be permitted to make appropriate inspection of the property, including inventory records, plans, specifications, and engineering reports, subject to any restrictions necessary in the interest of national security and to such reasonable rules as may be prescribed by the using command or the DE.

§ 644.541 Award of contract.

(a) *Opening of Bids.* All bids shall be opened and publicly disclosed by a duly authorized representative of the responsible DE at the time and place stated in the Invitation and advertisements.

(b) *Award and Notice to Bidders.* Award shall be made with reasonable promptness by notice to the responsible bidder whose bid, conforming to the Invitation for Bids, will be most advantageous to the Government, price and other factors considered, provided that any or all bids may be rejected when it is in the public interest to do so. When an award is made, unsuccessful bidders should be notified promptly and their earnest money deposits returned.

(c) *Equal Offers.* Equal offers mean two or more offers that are equal in all respects taking into consideration the best interests of the Government. When equal acceptable offers are received, award shall be made by a drawing by lot limited to the equal acceptable offers received (See also § 644.542.)

(d) *Public Auction.* When authorized by GSA, sales of surplus property may be made through contract auctioneers. Consideration should be given to auction sales when there is likely to be considerable interest in the property. GSA Regional Offices have had experience with actions, maintain lists of qualified auctioneers, are in a position to give other advice and assistance, and may authorize auction sales on behalf of GSA, pursuant to FPMR, § 101-47.304-7. Auctioneers retained under contract shall be required to publicly advertise for bids in accordance with applicable provisions of that regulation. The prior approval of DAEN-REM will be obtained before auction sales are undertaken.

§ 644.542 Application of anti-trust laws.

The Federal Property Act provides that real property and related personal property with an aggregate total cost of $1,000,000 or more (or personal property with an acquisition cost of $3,000,000 or more) or patents, processes, techniques, or inventions, regardless of cost, shall not be disposed of to any private interest until the advice of the Attorney General has been received as to whether the proposed disposal would tend to create or maintain a situation inconsistent with the anti-trust laws. Prior to obligating the Government on any such disposal, Division Engineers will furnish DAEN-REM information on the probable terms and conditions of the sale. DAEN-REM will use the information as the basis for a request to the Attorney General for advice. Under the provision cited, the Attorney General is allowed up to 60 days to furnish the advice requested. The Federal Property Management Regulation, § 101-47.301.2 provides guidance on the information to be furnished. Where indentical bids in excess of the $2,500 are received, FPMR, § 101-47.304-8 provides for a report to the Department of Justice. Section 101-47.304-8 provides guidance for such reports to be addressed to the Attorney General, WASH, DC, 20530.

§ 644.543 Determination of acceptable offers after advertising.

(a) Generally an acceptable offer is one which:

(1) Is submitted by a responsible bidder.

(2) Conforms to the Invitation for Bids.

(3) Equals or exceeds the appraised fair market value of the property.

(4) Was independently arrived at in open competition.

(b) A formal appraisal is not required where real property components:

(1) Are to be offered on a competitive sale basis that will adequately test the market.

(2) Are at the same location and are to be sold under a single advertisement.

(3) Have a total estimated fair market value of $10,000 or less for all property to be sold.

The determination as to necessity for a formal appraisal because of the $10,000 limitation may be made by an experienced real estate employee who need not be a real estate appraiser. This determination may be in the form of a simple written statement that in the judgment of the signer the property is not considered to exceed $10,000 in value. In these cases, awards will be supported by a determination by the DE that the market was adequately tested, and the price bid reasonable. For the purpose of records and reports, the sale price will be recorded as the fair market value. If it appears the market was not adequately tested, bids will be rejected and the property readvertised, or, if time does not permit readvertising, a sale may be consummated using the procedure provided in paragraphs (d) and (e) of this section.

(c) All land, irrespective of estimated value, and all other real property and components with an estimated value in excess of $10,000 will be appraised. Where an acceptable offer, as defined in paragraphs (a) and (b) of this section, is not received for such property as a result of public advertising, it will be readvertised unless the responsible DE determines, based upon written findings which shall be preserved as part of the permanent file, that further public advertising will serve no useful purpose.

(d) Where no acceptable bid is received as a result of the second advertising, or a determination was made that further advertising would serve no useful purpose or is not feasible, the DE may negotiate a sale at the highest price obtainable, provided:

(1) All bids are first rejected.

(2) The total of the appraised value for all property included in any single sales contract does not exceed $1,000.

(3) All past bidders, on any of the items, and any other known interested parties are afforded a fair opportunity to participate in the negotiations.

(4) The sale price is in excess of the highest bid received as a result of advertising.

(5) In his opinion the price is reasonable.

(e) Where the appraised or estimated value of all items to be included in a single sales contract exceeds $1,000, and no acceptable bid is received, the high bidder may at the discretion of the DE be given a reasonable period, not to exceed five working days, to increase his bid. At the same time all other bids shall be rejected and bid deposits returned. If the high bidder increases his offer to an amount equal to the total appraised or estimated value of the items involved, the DE may consummate the sale. All other cases will be forwarded to DAEN-REM together with an opinion as to whether the market was adequately tested and the highest price offered is reasonable, and with recommendations as to the course of action to be followed. If a negotiated sale to other than the highest bidder is recommended, information for preparation of a report to the Government Operations Committees of Congress will be included, as required in paragraph (c)(2) of § 644.544.

§ 644.544 Negotiated sales.

(a) *To Private Parties.* Negotiated sales to private parties are not viewed with favor. Generally, such negotiated sales will be approved only where an emergency exists that will not permit advertising, where advertising would serve no useful purpose, or where a negotiated sale is in the best interest of the Government. Emergencies which justify sales without advertising do not ordinarily justify sales without competition. Instances are rare where the emergency is such that time does not permit the oral solicitation of quotations from more than one source. In any sales which are made without benefit of advertising, competition by informal solicitation and quotation will be obtained to the maximum extent feasible under the circumstances. Such sales should be negotiated at the best terms obtainable and at not less than the appraised fair market value.

(b) *To Eligible Agencies.* (1) Acts of Congress listed in the Federal Property Management Regulation, § 101-47.4905 (Illustrations), authorize negotiated sales of surplus real property to states and other eligible public agencies listed therein. The Acts listed, except section 203(c)(3)(H) of the Federal Property Act (40 U.S.C. 484(c)(3)(H)), cover special classifications of property for specialized use, the most important of which is disposal of airport property. The section of the Act cited authorizes negotiated sales of surplus property to states, territories, possessions, political subdivisions thereof, or tax-supported agencies thereof, provided the appraised fair market value of the property and other satisfactory terms of disposal are obtained. (The other Acts listed in § 101-47.4905 provide for disposal subject to conditions of use but without consideration, or at reduced consideration, except power transmission lines which are sold without conditions but at the appraised fair market value.) Notification that surplus property is available for disposal will be given to eligible public agencies for all airport property and for any other property where there is reason to believe that an eligible public agency may be interested in the property or that the property may be adaptable to the agency's use (§§ 644.400 through 644.443).

(2) Title 10, United States Code, Section 4682, authorizes the Secretary of the Army to sell obsolete or excess material at fair value to the National Council of the Boy Scouts of America. The Judge Advocate General has held that buildings and other improvements no longer required by the De-

partment be sold to that organization at the appraised fair market value.

(c) *Authority to Negotiate.* (1) The DE is authorized to dispose of land, improvements, related personal property and real property components (including standing timber and embedded sand, gravel, and stone-quarried products in their unmined or natural state) with an estimated fair market value of $1,000 or less by negotiated sale without advertising, provided that such action is within the purview of paragraphs (a) and (b) of this section, and satisfactory terms of disposal can be obtained. Except as provided in § 644.543 and paragraph (b) of § 644.544 all sales are not less than the appraised fair market value. See paragraph (d) of this section for requirement for appraisal by contract.

(2) All other proposals to negotiate sales without advertising will be submitted to DAEN-REM for advance approval. In submitting such proposals, the nature of the emergency or other situation justifying the waiver of advertising will be clearly stated. The property involved will be adequately defined, and the appraised fair market value and proposed price will be set forth. Negotiated sales of surplus property with an appraised value in excess of $1,000 under provisions of the Federal Property Act cited in paragraph (b)(1) of this section, require submission of an explanatory statement to the Government Operations Committees of Congress. Under the FPMR, a statement must be submitted at least 35 days in advance of each such negotiated disposal. When required, the DE will forward a draft of statement to HQDA (DAEN-REM) for transmittal to GSA for submission to the Committees.

(d) *Appraisal by Contract.* Pursuant to Federal Property Management Regulation, § 101-47.304-9(b), where sales are to be negotiated under the authority provided by paragraphs (a) and (b) of this section, a contract appraisal should be obtained provided that the cost of such a contract would not be out of proportion to the recoverable value of the property and is in the best interest of the Government. If such is not the case, the head of the disposal agency, or his designee, may authorize any other appropriate method to obtain an estimate of fair market value. Requests for waiver will be forwarded to DAEN-REM.

(e) *Record to Justify Waiver of Advertising.* (1) A written justification for negotiated sales made under the authority of these instructions will be prepared and filed by the DE with the record of disposal in each case. A copy of Standard Form 1036 may be used for this purpose.

(2) Except for those cases covered by paragraph (b) of this section, the nature of the emergency compelling waiver of advertising, the reason why it was considered that advertising would serve no useful purpose, or why the negotiated sale was considered to be in the best interest of the Government, will be clearly stated. In cases where an explanatory statement is transmitted to the Committees on Government Operations, a copy of that statement will be furnished the appropriate GSA Regional Office and filed with the record of the case as the required documentation of justification for waiver of advertising. DAEN-REM will make available to the DE necessary copies of such statements for filing or distribution.

§ 644.545 Form of invitation for bids and contract of sale.

Sale contract forms will be prepared by the DE conducting the sale. ENG Form 571-R, Invitation for Bids, Bid and Acceptance, Sale of Surplus Real Property will be used as a guide in sales of bare land or improved land and related personal property. ENG Form 1038-R, Invitation for Bids, Bid and Acceptance, Sale and Removal of Buildings (or other Real Estate Improvements), will be used as a guide in sales of buildings and other improvements for removal from the site. These forms are designed for use in normal sales of land and real estate improvements pursuant to existing delegations of authority. The DE is authorized to change the formats, to rearrange the sequence of paragraphs, and to add or to delete paragraphs in whole or part, as local circumstances require, but no substantive departure from the forms is authorized without prior specific approval of DAEN-REM. Whenever a sale is to be conducted pursuant to a special delegation of authority, and whenever the circumstances of a sale are such as to render use of these forms inappropriate, a form will be devised by the DE to meet the requirements of the particular sale involved, and forwarded to DAEN-REM for approval. Suggested additional provisions and conditions for use in the sale of standing timber are contained in ENG Form 2140-R, Supplement to Standard Form 114 for use in Timber Sales Contract. In preparing sale contract forms, the following instructions will be followed:

(a) A definite date and time will be set for the opening of bids.

(b) Bids will be prepared in quadruplicate, all copies to be signed by the bidder.

(c) The Invitation for Bids will require each bidder to submit with his bid a certified check, cashier's check, traveler's check, or United States postal money order drawn to the order of the "Treasurer of the United States" for at least 20 percent of the bid. When the cash bid may be a small part of the total consideration (where such dismantling and restoration is involved), the DE should set a definite higher amount as a bid deposit. Also, in such cases a performance bond, adequate to discourage breach of contract after only partial performance, may be required.

(d) For real property components the Invitation for Bids will require payment in full within seven days after the successful bidder is notified that his bid is accepted and, in any event, prior to removal of the property. The time specified for completion of payment for land will depend upon the sum of money involved.

(e) Bids may be submitted for one or any number of items. Items or lots of real property will be offered in such reasonable quantities as to permit all bidders, small as well as large, to compete on equal terms. Land, however, will not be subdivided solely for this purpose, and in the case of timber sales or sales of embedded sand, gravel and stone, it may not be feasible to have more than one purchaser operating in the same area. Further, it may not be to the Government's interest. Buildings will be offered for sale as single items whenever practicable but submission of bids covering specified groups as an item or all of the buildings may be permitted if the DE considers such a procedure is in the best interest of the Government. It may sometimes be advantageous to divide the buildings into appropriate groups and to permit bidding on individual buildings or on specified groups of buildings or on the entire lot. When such bids are permitted, the Invitation for Bids, ENG Form 1038-R, will be flagged to inform bidders that lump sum bids on the entire lot (and specified groupings, if this procedure is appropriate) may be made but will not be accepted unless the lump sum bid exceeds the total of the highest bids received on each item (or on the groupings).

§ 644.546 Credit.

Payment of the purchase price over an extended period of time should be considered only when the price is a considerable amount, and it may be to the Government's interest to extend credit. Prior to offering property for sale on an extended payment plan basis, approval from DAEN-REM will be obtained. Extension of credit will be within the limitations of FPMR, § 101-47.304-4. Credit cannot be extended, except to state or local governments, nor can any other special condition be applied, unless provision was made for it in the Invitation for Bids.

§ 644.547 Extensions of time.

Granting an extension of time, where unusual or unforeseeable circumstances are not present, is contrary to the form of the Invitation for Bids, and amounts to the application of special conditions not provided for therein. This violates GSA regulations and the principles of fair competition. Adoption of the following guides in the development and administration of sales programs will help to avoid unjustified requests for extensions of time:

(a) Establishment of realistic periods for completion of the sales contract.

(b) Necessary and justified extensions to be authorized subject to posting additional bond to insure performance and payment of adequate consideration where use of Government land is involved.

(c) Reasonable restrictions on resale of improvements at the site.

(d) Prohibition against posting advertising signs and storage of salvaged material on the installation pending sale to other customers.

§ 644.548 Abstract of bids.

At the opening of bids, DD Form 1501 or 1501-1 (Abstract of Bids) will be prepared showing all bids received, the amount for each item, and the total. The successful bid will be encircled in red or typed in red.

§ 644.549 Payments.

All payments should be in the form of cash, cashier's check, money order, traveler's check, draft, or any other form of payment not subject to stoppage or revocation. All such checks, money orders, or drafts should be drawn to the order of the "Treasurer of the United States."

§ 644.550 Sale to employees or military personnel.

The sale of Government real property will not be made to civilian employees or military members of the Department of Defense (including an agent, employee or member of the immediate family of such personnel) whose duties include any functional or supervisory responsibility for the disposal of real property under Army control.

§ 644.551 Equal opportunity—sales of timber, embedded sand, gravel, stone, and surplus structures.

Consistent with Executive Order No. 11246 as amended by Executive Order No. 11375, every Government contract involving employment shall include provisions for equal opportunity in employment, in connection with the performance of work under the contract. The equal employment opportunity clause in DAR 7-103.18 will be included in all contracts and first-tier sub-contracts over $10,000 pertaining to the following real estate actions in the United States and its possessions, unless exempted under the provisions of DAR 12-805:

(a) Sale of standing timber.

(b) Sale of embedded sand, gravel, and stone in their natural state.

(c) Sale of surplus structures where an appreciable amount of dismantling and site restoration is involved.

§ 644.552 Statement of contingent or other fees.

The instructions and procedures contained in Section I, Part 5, DAR, are applicable to the sale of Government-owned real property and will be followed. Where applicable the statement set forth in DAR 1-506 will be included in Invitation for Bids and Contracts of Sale and an identical signed statement will be secured from the prospective purchaser where the property is to be sold without advertising for competitive bids. In addition to the statement, Standard Form 119 (Contractor's Statement of Contingent or Other Fees for Soliciting or Securing, or Resulting From Award of Contract) will be completed where either part of the statement is answered in the affirmative. The exceptions to the use of the statement and Standard Form 119 are set forth in DAR 1-506-3 and may apply generally to real property sales of the Army, Air Force and non-defense agencies except that the monetary limitation prescribed by DAR 1-506.3 is $1,000 insofar as sales or property of the Department of Energy are concerned.

§ 644.553 Preparation and distribution of sales documents and reports of sales.

(a) *Report of Funds Received.* As funds are collected from sales, reports will be prepared promptly. Sales may be allowed to accumulate to permit the making of fewer reports, but in no case will they go unreported longer than 48 hours. DD Form 1131 and supporting papers will be signed by the DE conducting the sale.

(b) *Numbering of Contracts.* The numbering of contracts involving the receipt or expenditure of funds will be in accordance with ER 1180-1-1 (ECI 30-203).

(c) *Documentation and Reports of Sale.* The DE responsible for the sale will prepare and retain copies of documents pertaining to the sale, and will make required distribution of the following (see paragraph (d) of this section).

(1) Contract—one signed and two authenticated copies.

(2) DD Form 1501 or 1501C (Abstract of Bids)—one copy (not required for negotiated sales).

(3) DD Form 1131—four copies. All sales will be listed on DD Form 1131, extended if necessary. Separate forms are not required for each contract. When receipts from more than one contract are reported on one DD Form 1131, all related contracts will be attached to and transmitted with the form.

(4) Standard Form 1036, Statement and Certificate of Award, attached to the original signed contract and the DE's copy of each contract, or separate statement justifying negotiation (paragraph (e) of § 644.544).

(5) Advertisement, if any—two copies.

(6) Bond, if any—two signed copies.

(d) *Distribution of Reports of Sale*—(1) *Military Property.* The finance officer will be furnished one authenticated copy of the contract and four executed copies of DD Form 1131, together with funds collected. The finance officer will retain the contract, funds, and one copy of DD Form 1131, and will receipt and return to the responsible DE three copies of DD Form 1131.

(2) *Civil Works Property.* The finance officer will be furnished four executed copies of DD Form 1131, together with funds collected, an authenticated copy of each contract, Standard Form 1036 or a statement justifying negotiation, copy of advertisement, if any, and original signed bond, if any. Three copies of DD Form 1131 (Cash Collection Voucher) will be receipted and returned to the DE.

§ 644.554 Insurance against loss or damages to buildings and improvements by fire or acts of God.

The Department does not carry property insurance of any nature. Vendees, however, may be advised as to their liability for certain losses and that insurance protection against such risks is optional. Under the FPMR, the vendee must provide insurance to protect the United States when credit is extended (Section 101-47.304-4(f)).

§§ 644.555—644.557 [Reserved]

INSPECTIONS TO INSURE COMPLIANCE WITH DISPOSAL CONDITIONS

§ 644.558 Properties requiring compliance inspections.

The principal properties conveyed which require inspections are for the training of civilian components of the Armed Forces. However, other properties are sometimes conveyed under special acts of Congress subject to conditions required by the authorizing act. These properties will also be inspected for compliance with such conditions.

§ 644.559 Civilian component training facilities.

(a) *Authority.* Under the provisions of the Surplus Property Act of 1944, as amended, a number of surplus real properties of the United States certified by the Governor of the state in which located and by the Secretary of the Army, Navy or Air Force as the case was, as being suitable and needed for use in training and maintaining civilian components of the Armed Forces under their respective jurisdictions, were conveyed by the Administrator of the War Assets Administration or by the General Services Administration to states, their political subdivisions or tax-supported instrumentalities for such purposes. These conveyances contained a number of covenants, conditions, restrictions and reservations, designed to insure the use and maintenance of the property and appurtenances for the purpose for which conveyed and otherwise to protect the interest of the United States. The Secretary of Defense is authorized by (40 U.S.C. 484(k)(4)(d)) to:

(1) Determine and enforce compliance with the terms, conditions, reservations and restrictions contained in any instrument by which such transfer was made;

(2) Reform, correct, or amend any such instrument by the execution of a corrective, reformative, or amendatory instrument where necessary to correct such instrument or to conform such transfer to the requirements of applicable law; and

(3) Grant releases from any of the terms, conditions, reservations and restrictions contained in, and convey, quitclaim, or release to the transferee or other eligible user any right or interest reserved to the United States by any instrument by which such transfer was made, if he determines that the property so transferred no longer serves the purpose for which it was transferred, or that such release, conveyance, or quitclaim deed will not prevent accomplishment of the purpose for which such property was transferred: Provided, that any such release, conveyance, or quitclaim deed may be granted on, or made subject to, such terms and conditions as he shall deem necessary to protect or advance the interest of the United States.

(b) *Authority Delegated.* The authority vested in the Secretary of Defense under the Act cited in paragraph (a) of this section has been redelegated to the Secretary of the Army and the Secretary of the Air Force, respectively (Department of Defense Directive 5100.10, dated 16 March 1972).

§ 644.560 Inspections of civilian component training facilities and other properties conveyed subject to conditions.

The DE, within whose areas of military real estate operations are located the facilities conveyed under the authority mentioned in § 644.559, will make physical inspections thereof for the purpose of determining compliance with the terms of the conveyance. Any evidence of noncompliance should be reported to DAEN-REM in order that appropriate recommendations may be made to the respective Secretary for corrective action. A detailed statement of the facts and recommendations of the DE should be included in the report. Inspections should be scheduled and integrated with outlease compliance inspection itineraries in the interest of economy. This requirement for inspections extends to properties conveyed by the Secretary of the Army or Air Force under special legislation, where the deed of conveyance imposes conditions on future use of the land. These inspections need not be made annually but frequently enough so that the DE is assured that the conditions are being observed, and at least every three years. Compliance with conditions in deeds for property conveyed for airport purposes under 49 U.S.C. 1723 and 50 App. U.S.C. 1622g is the responsibility of the Secretary of Transportation; for property conveyed for purposes of health and education, the Secretary of Health, Education, and Welfare or its successor agencies (40 U.S.C. 484(k)(4)). The Commander, U.S. Army Materiel Development and Readiness Command, is responsible for compliance with the National Security Clause, and similar conditions, in deeds conveying industrial properties.

§ 644.561 Inspections of civil works properties.

Disposal of real estate interests which impose restrictions on the use of the land, or reserve an estate in the land, will be inspected for compliance on an annual or other reasonable basis to assure compliance.

§§ 644.562—644.564 [Reserved]

PARTS 645—649 [RESERVED]

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Authority: 10 U.S.C. 3012.

Source: 42 FR 65026, Dec. 29, 1977, unless otherwise noted.

Subpart A—General

§ 650.1 Purpose.

This regulation prescribes policies, assigns responsibilities, and establishes procedures for the protection and preservation of environmental quality for the Department of the Army in peacetime.

§ 650.2 Applicability.

This regulation applies to: (a) All active, semiactive, and Army Reserve installations and activities located in the United States.

(b) National Guard installations and sites supported with Federally appropriated funds.

(c) Army installations and activities overseas in accordance with the general provisions set forth in § 650.5(c).

(d) Contractor activities and lessees located on real property in the United States under the jurisdiction of the Department of the Army.

(e) The Civil Works activities under the jurisdiction of the Secretary of the Army and implemented by the Chief of Engineers are excluded from the provisions of this regulation. Separate environmental regulations promulgated for Civil Works activities by the Chief of Engineers (COE) are found generally in 33 CFR Chapter II and Engineering Regulations.

§ 650.3 Explanation of terms.

For the purpose of this regulation, the following apply:

(a) *Facility.* (AR 310-25.) Facilities include buildings, installations, structures, public works, equipment, aircraft, vessels, and other vehicles and property under the control of or constructed or manufactured for leasing to the Army.

(b) *Environmental quality standard.* The Federal, State and regional quality standards adopted pursuant to the Clean Air Act; Water Pollution Control Act, Noise Control Act and other Federal statutes established for the protection and enhancement of environmental quality.

(c) *Environmental performance specifications.* Permissible limits of emissions, discharges, or other values applicable to activities which would provide for conformance to environmental quality standards to protect health and welfare.

(d) *Environmental pollution.* The condition resulting from the presence of chemical, physical, radiological, or biological forces which alter the natural environment and thus adversely affect human health or the quality of life, biosystems, structures and equipment, recreational opportunity, aesthetics, and natural beauty.

(e) *Environmental enhancement.* All actions taken to improve the environment, including but not limited to, those to abate environmental pollution and meet environmental quality standards and performance specifications.

(f) *Substantive standards and limitations.* The qualitative and quantitative pollution control provisions contained in approved State implementation plans promulgated under Federal environmental protection statutes.

(g) *United States.* The 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(h) *Installation.* A grouping of facilities, located [illegible] the same vicinity, which support particular functions.

(i) *Activity.* A unit, organization or installation performing a function or mission.

§ 650.4 Goal.

It is the Department of the Army's goal to plan, initiate, and carry out all actions and programs to minimize the adverse effects on the quality of the human environment without impairment to the Army's mission. Inherent in this goal is the requirement to achieve the following objectives:

(a) Eliminate the discharge of potentially harmful pollutants produced by Army activities.

(b) Conserve and wisely use natural and material resources provided for use throughout the Army.

(c) Maintain, restore, and enhance the natural and manmade environment in terms of its visual attractiveness and productivity.

(d) Demonstrate initiative and leadership in the formulation and execution of a program that contributes to the national goal of preserving and enhancing the environment.

§ 650.5 Policy.

(a) All Department of Defense agencies are required to—

(1) Comply with the provisions of the National Environmental Policy Act and all other Federal environmental laws, executive orders, and regulations.

(2) Demonstrate leadership in environmental pollution abatement and enhancement of the environment consistent with the security interests of the Nation.

(b) The Department of the Army policy is that—(1) The achievement of environmental objectives is an integral part of the Army mission.

(2) The environmental consequences of any proposed action will be considered during the planning process and will be evaluated along with the technical and economic factors in the decisionmaking process.

(3) A detailed environmental impact statement will be prepared and processed in accordance with the National Environmental Policy Act when an environmental assessment reveals that the proposed action may significantly affect the quality of the human environment, is highly environmentally controversial, or is anticipated to evoke litigation based upon environmental issues. "Environmentally controversial" relates to cases in which substantive disagreement, real or purported, exists as to the extent, nature, or effect of the action on the environment.

(4) Insofar as essential mission constraints, permit, all programs and actions will be planned, initiated, or carried out in a manner to minimize polluting or degrading the environment.

(5) All activities subject to Federal, State, or local regulation will be conducted in accordance with applicable standards and monitored to insure compliance with such standards.

(6) All material and energy resources will be procured and used in a manner that will minimize the emission of pollutants and the production of wastes in keeping with the national policies for energy conservation. Wastes generated will be reprocessed or reclaimed for other productive uses to the maximum extent practicable.

(7) An understanding of the urgent need to preserve and restore the natural environment and to conserve material resources and an appreciation of the Army's support of the environmental protection effort will be fostered throughout the Army. Initiative, leadership, and cooperation in achieving these environmental objectives are encouraged of all personnel.

(8) Commanders will cooperate, to the extent practicable, in beneficial community environmental action programs.

(9) Historic and cultural sites, structures, and objects under Army jurisdiction will be preserved, restored, and maintained for the benefit and enjoyment of future generations.

(10) An integrated, multiuse, natural resources, land management program will be conducted for forests and woodlands, fish and wildlife, open space, soil, water, vegetation, outdoor recreation, natural beauty, and increased public access and nonconsumptive utilization on lands under Army jurisdiction within the provisions of AR 405-80 and AR 420-74.

(c) At locations outside the United States, Department of the Army activities will comply with the requirements of the National Environmental Policy Act as set forth in Subpart B of this part and conform at all times to the environmental quality standards of the host country, international agreements, and Status of Forces Agreements. The provisions of this regulation will be used, to the extent applicable, in fulfilling environmental protection requirements in overseas locations.

(d) When, in the interest of national defense, it is not considered practicable to comply with the foregoing policies, the matter will be referred with full particulars to HQDA (DAEN-ZCE), WASH DC 20310.

§ 650.6 Implementing guidance.

Guidance for implementing DA environmental policies are—(a) The environment must be considered as a single, integrated system characterized by the continuous interaction of air, land, and water.

(b) For planning purposes, the environmental system will be regarded as closed; nothing can be thrown away. Wastes must be either recycled and reclaimed or confined and contained so they will not migrate to re-emerge in pollutant form.

(c) Pollutants are potential resources which are out of place.

§ 650.7 Responsibilities.

(a) Army Environmental Council will—

(1) Review and redirect, as necessary, Army environmental policy and programs to insure the Army fulfills its responsibility under the National Environmental Policy Act and other Federal laws and regulations pertaining to pollution control and environmental protection.

(2) Provide policy guidance on those matters which fall within the cognizance of the Council and on such matters as referred for consideration by the Secretariat or the Army Staff.

(b) Army Environmental Committee will assist the Army Environmental Council by—

(1) Proposing new environmental policies and programs as directed by the Council.

(2) Serving as a forum for the exchange of information and ideas related to the formulation of the Army Environmental Program.

(3) Assisting in the resolution of interagency problems on environmental matters.

(4) Assisting in the formulation of Army-wide implementing instructions for the Army Environmental Program.

(5) Maintaining surveillance over the ongoing Army Environmental Program and activities.

(6) Reviewing Army Environmental Impact Statements and requests for exemption from Federal and State pollution control standards prior to formal approval by the Assistant Secretary of the Army (Civil Works).

(7) Providing reports and information as directed by the Army Environmental Council.

(c) Chief of Engineers will—

(1) Exercise primary Army Staff responsibility for directing and coordinating environmental activities within the Army.

(2) Recommend such actions as will enable DA to comply with the intent, purposes, and procedures of the National Environmental Policy Act and other Federal legislation relative to environmental quality.

(3) Apply Army environmental policy and direct programs so that applicable environmental and pollution control laws and regulations are observed in the acquisition, construction, operations, and disposal of real property.

(4) Maintain positive surveillance over and report progress of the design and construction of pollution control facilities for Army installations.

(5) Insure that environmental research and development (R&D) projects fully support the environmental program goals.

(6) Promote participation by engineer troop units in the Army's environmental program.

(7) Provide technical and engineering assistance on the pollution control aspects of construction and the Real Property Maintenance Activities.

(8) Prepare an annual Department of the Army Environmental Quality Status Report (§§ 650.9 and 650.11).

(9) Conduct, with the assistance of the Army Staff agencies concerned, a continuing review of DA statutory authority, administrative regulations, policies, procedures, and programs (including those relating to loans, grants, contracts, leases, licenses, or permits) to eliminate deficiencies or inconsistencies which might prohibit or limit full compliance with the National Environmental Policy Act of 1969, Executive Orders 11514 and 11752, DoD Instruction 4120.14 and DoD Directives 4150.7, 5030.41, 5100.50, 6050.1 and 6050.2.

(d) The Surgeon General will—

(1) Monitor, evaluate, and disseminate data on health and welfare aspects of environmental pollution within the Department of the Army to ensure that the required degree of environmental enhancement is maintained.

(2) Provide health and medical policy guidance in respect to instructions and recommendations received from other Federal agencies assigned responsibility for environmental enhancement at Federal installations.

(3) Provide personnel for conducting field investigations and special studies concerning environmental pollution and recommend enhancement measures required for protection of health.

(4) Provide technical assistance and guidance on the health and environmental aspects of management and disposal of hazardous and toxic materials.

(5) Provide technical consultation to the Office, Chief of Engineers (OCE) and appropriate commanders on health aspects in the development of environmental enhancement policy and programs.

(e) The Chief of Information will—

(1) Ensure that the public is informed of the Army's accomplishments in environmental protection and enhancement.

(2) Develop and execute a command information program designed to stimulate understanding and participation by all Army personnel.

(f) Heads of Army Staff agencies will—

(1) Integrate environmental considerations into regularly assigned staff management functions and activities to insure compliance with applicable pollution control and environmental protection laws and to demonstrate the Army's leadership in the national effort to preserve the environment.

(2) Ensure that the environmental consequences of each proposed project, program regulation, or action for which they are the Army Staff proponent are assessed at an early stage of planning and are made an integral part of the decisionmaking process. Further, ensure that environmental damage is mitigated to the maximum extent feasible.

(g) Major Army commanders will—

(1) Establish an organizational structure to plan, execute, and monitor environmental programs.

(2) Formulate and execute an environmental program which fully supports the achievement of the Army's environmental goals and objectives.

(3) Monitor and control the environmental projects and activities of the subordinate commands and the installations and activities under their jurisdiction.

(4) Review, consolidate, and forward to higher authority, reports from subordinate installations and activities concerning their environmental projects and activities.

(h) Army installation and activity commanders will—

(1) Establish an organizational structure to plan, execute, and monitor environmental programs.

(2) Formulate and execute an environmental program based on the policies set forth in § 650.5 to achieve the Army's environmental goals and objectives.

(3) Cooperate with State and local authorities in formulation and execution of projects and activities required to bring an installation into compliance with applicable Federal, State, and regional pollution control standards.

(4) Integrate environmental protection and preservation activities, to the fullest extent feasible, into the planning and execution of the command's basic mission.

(5) Report, as required, to major commanders on the progress and effectiveness of environmental projects and activities to detect, quantify, and correct pollution sources in accordance with published laws, standards, and guidelines.

§ 650.8 Installation, State and Environmental Protection Agency (EPA) relationships.

(a) Federal installations are not required to comply with State or local administrative procedures with respect to pollution abatement and control. However, the majority of Federal environmental protection statutes contain provisions that require compliance with Federal, State, interstate and local substantive standards and limitations.

(b) Permits required by Federal statute, notably the National Pollutant Discharge Elimination System (NPDES) permits, will be obtained from the Environmental Protection

Agency in accordance with regulations promulgated pursuant to the Federal Water Pollution Control Act and the guidance contained in this regulation.

(c) Compliance schedules required by State Implementation plan for air pollution control, reflecting the major increments of progress for projects designed to meet specified standards, will be negotiated with State regulatory authorities and coordinated with the Regional Office of EPA. When established, such compliance schedules are enforceable and may only be changed by renegotiation.

(d) Performance reports as specified in this regulation on the operation of wastewater treatment facilities, sources of air pollutant emissions, oil spills and such other reports as may be directed by DAEN-ZCE will be submitted to EPA regional authorities, as appropriate, who in turn will transmit appropriate information to State authorities. Requests for substantive reports not provided for by this regulation will be promptly referred to HQDA (DAEN-ZCE) Washington, D.C. 20310 for guidance.

(e) Military authorities are to cooperate fully with EPA, State, regional and local authorities requesting access to Army installations for the purpose of inspecting pollution control facilities and activities.

§ 650.9 Annual Status Report on Environmental Programs and Activities (RCS DD-I&L (A) 1269).

HQDA (DAEN-ZCE) will prepare the DA Annual Status Report on Environmental Programs and Activities (RCS DD-I&L (A) 1269). The DA report will include information on the programs and activities of the major Army commands, the Army Reserve, and the Army National Guard.

(a) Major Army commanders will submit an annual report to DAEN-ZCE not later than February 15, covering actions and activities of the preceding calendar year. The command report should be based on feeder reports from active and semi-active installations. Command and installation reports will include the information outlined in § 650.11 to the extent that it is applicable. Further, the installation report will contain information identified in § 650.11 (c), (d), (e), (f), (g), (h) and (i) for tenant activities and satellited Army Reserve facilities.

(b) The State adjutants will submit an annual report to the Chief, National Guard Bureau not later than February 1. Negative reports are required. The Chief, National Guard Bureau will consolidate and forward reports containing facilities/sites that are not in compliance with Federal/State standards to HQDA (DAEN-ZCE) WASH DC 20310 not later than February 15. The report will contain the following information:

(1) Status of compliance with Federal/State pollution control standards for those facilities/sites which receive support from federally appropriated funds. Those not in compliance will be listed separately with the reasons for noncompliance.

(2) Status of programs and actions by facility/site currently ongoing that will bring the facility/site into compliance with Federal/State pollution control requirements.

(3) Those requirements along with estimated cost needed to bring facilities/sites not addressed in paragraph (b)(2) of this section into compliance with Federal/State pollution control standards.

(4) Significant accomplishments by ARNG units to protect and enhance the environment.

(c) Commander in Chief USAREUR; Commanders, Eighth US Army, and US Army, Japan will submit an annual report covering only those elements of § 650.11 which may be applicable. This should include an analysis of the scope of host nation environmental quality laws and regulations, their impact on US Army installations and activities, status of compliance with specific host nation requirements, and a summary of plans to correct any deficiencies.

§ 650.10 Environmental Quality Award.

(a) *Secretary of Defense award.* The Secretary of Defense presents an annual award to the Department of Defense installation which conducted the best environmental quality program during the preceding calendar year and give recognition to other installations having particularly noteworthy programs. Department of the Army nominees will be selected by the Army Environmental Council from the list of Active Army installations nominated to receive the Secretary of the Army Award.

(b) *Secretary of the Army Award.* The Secretary of the Army will present an Environmental Quality Award to the Army installation that evidences the most noteworthy contribution to protecting and preserving the quality of the environment. The basis of selection will be the annual Status Report on Environmental Programs and Activities prepared by an installation and used as a feeder report by the major command to its overall report (RCS DD-I&L (A) 1269, § 650.9).

(c) *Nominating instructions.* (1) Army commanders may nominate active or semiactive installations or separate and distinct geographically identifiable activities (e.g., USA Material Development and Readiness Command (DARCOM) depot activity and subinstallations) as candidate for the Environmental Quality Award, not to exceed the number listed below:

	No. of nominees
Command:	
US Army Training and Doctrine Command	3
US Army Forces Command	3
US Army Materiel Development and Readiness Command	3
US Army Health Services Command	1
US Army Military District of Washington	1
US Army Intelligence and Security Command	1
US Army Communications Command	1
US armies overseas	1

(2) The list of nominations will be accompanied by six copies of each installation annual report and submitted to HQDA (DAEN-ZCE) WASH DC 20310 by March 31. Reports will be typewritten or printed, fastened or bound in folders approximately 9 x 11 inches and narrative in style covering the topics in § 650.11.

§ 650.11 Reporting requirements.

The annual status reports required under the provisions of § 650.9 (RCS DD-I&L (A) 1269) will be prepared, using the following format. Each topic will be addressed in sufficient detail to give the next higher headquarters an understanding of the overall environmental program, specific accomplishments, problem areas, and planned new initiatives.

(a) Environmental protection organization.

(1) Organizational structure for environmental matters.

(2) Staffing and management procedures.

(b) National Environmental Policy Act implementation.

(1) Summary of environmental assessments made.

(2) Environmental impact statements prepared and their status.

(c) Air pollution control.

(1) Status of compliance with applicable air quality standards.

(2) Status of corrective projects.

(3) Summary of litigation actions, if any.

(d) Water pollution control.

(1) Status of National Pollutant Discharge Elimination System (NPDES) permits requested and issued.

(2) Status of compliance with applicable water quality standards and permit provisions.

(3) Status of corrective projects.

(4) Summary of litigation actions, if any.

(e) Noise pollution control.

(1) Summary of major sources.

(2) Status of corrective measures.

(3) Summary of complaints/litigation, if any.

(f) Radiation pollution control.

(1) Summary of ionizing sources.

(2) Status of protective measures.

(g) Solid waste management.

(1) Summary of waste disposal operations.

(2) Waste recycling (equipment installed and in use, quantities and types of materials recycled, funds derived from sale of waste materials and use made of such funds).

(h) Toxic and hazardous materials management.

(1) Identification of significant toxic materials being controlled.

(2) Summary of types and protective measures for control of oil spills, disposal of toxic chemicals, etc.

(3) Identification of unique problems.

(i) Land management.

(1) Summary of conservation activities (forest, fish and wildlife management, etc.).

(2) Summary of historical and archeological sites and facilities and related preservation activities.

(3) Summary of installation attractiveness program and activities.

(j) Environmental research programs (if applicable).

(1) Summary of ongoing environmental research activities by pollution control media (air, water, etc.).

(2) Summary of technology-application activities.

(3) Identification of new research requirements.

(k) Environmental education, training and information programs.

(1) Status of individual and unit education training activities.

(2) Summary of environmental protection courses given or attended (TRADOC Report will include courses and student attendance at courses in Army School System).

(3) Summary of public information activities.

(l) Environmental enhancement activities.

(1) Summary of environmental enhancement activities and projects conducted in support of Keep America Beautiful, Defense Community Service Program, etc. (includes activities by active and Reserve units).

§ 650.12 Executive Order 11752.

Figure 1-1 is the Presidential Executive Order dated December 17, 1973[1] which sets forth the policy and standards for the prevention, control, and abatement of environmental pollution at DA installations.

§ 650.13 Endangered species.

All matters concerning the Army's policy and regulatory guidance reflecting the Endangered Species Act of 1973 (Pub. L. 93-205) is covered in AR 420-74.

Subpart B—Environmental Considerations in DA Actions [Reserved]

Subpart C—Water Resources Management

GENERAL

§ 650.51 Purpose.

This chapter sets forth guidance and procedure for the DA implementation of the Federal Water Pollution Control Act of 1972 (FWPCA) (Pub. L. 92-500) and the water pollution control regulations promulgated by the U.S. Environmental Protection Agency, U.S. Coast Guard, U.S. Army Corps of Engineers and State and regional water pollution control authorities. Additional guidance regarding discharge of hazardous and toxic materials appears in Subpart F of this part.

§ 650.52 Goals and objectives.

The Department of Army goal is to conserve water resources and protect them from contamination by controlling all sources of pollutants in accordance with applicable Federal, State or regional standards and vigorously contribute to the attainment of the national goal of eliminating the discharge of pollutants by 1985. Inherent in this goal are the following objectives:

(a) Identify, treat, monitor, control and dispose of all waterborne wastes produced by Army fixed and mobile facilities in accordance with published Federal, State and regional standards.

(b) Conserve water resources used in the conduct of basic activities on all Army installations by instituting economy measures and by reuse when practicable.

(c) Minimize soil erosion and attendant pollution caused by rapid and uncontrolled runoff into streams and rivers.

(d) Provide drinking water that satisfies the potability standards published by the US Environmental Protection Agency (EPA) as interpreted by The Surgeon General of the Army (see § 650.57).

(e) Comply with the provisions of the Federal Water Pollution Control

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[1] 38 FR 34793, December 19, 1973; 3A CFR, 1973 Comp., p. 240.

Act (Pub. L. 92-500) by obtaining and complying with permits issued by EPA under the National Pollutant Discharge Elimination System (NPDES) and the Corps of Engineers for the discharge of dredged or fill material.

(f) Comply with the provisions of the Marine Protection, Research and Sanctuaries Act of 1972 (Pub. L. 92-532) by obtaining and complying with permits issued by EPA for the discharge of any material other than dredged material into ocean waters and by the Corps of Engineers for the discharge of dredged material into ocean waters.

§ 650.53 Explanation of terms.

(a) National Pollutant Discharge Elimination System (NPDES). The system for issuing and conditioning permits under a schedule of compliance and denying permits for the discharge of pollutants from point sources into the navigable waters, which is administered by the Administrator of the Environmental Protection Agency pursuant to sections 402 and 405 of Pub. L. 92-500. The following additional terms have the following meanings with respect to the NPDES program and the FWPCA:

(1) *Pollutant.* Solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharge into water. It does not mean "sewage from vessels."

(2) *Point source.* Any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.

(3) *Discharge of a pollutant.* Any addition of any pollutant to navigable waters from any point source.

(4) *Permit.* Any permit or equivalent document or requirement issued by the Environmental Protection Agency to regulate the disposal of pollutants.

(5) *Schedule of compliance.* A schedule of remedial measures including sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard.

(6) *Navigable waters.* All navigable waters of the United States (33 CFR Part 329); tributaries of navigable waters of the United States; interstate waters; intrastate lakes, rivers, and streams which are utilized by interstate travelers for recreational or other purposes; intrastate lakes, rivers, and streams from which fish or shellfish are taken and sold in interstate commerce; and intrastate lakes, rivers, and streams which are utilized for industrial purposes by industries in interstate commerce.

(b) *Treatment works.* Any facility, method or system for the storage, treatment, recycling, or reclamation of municipal sewage or industrial wastes of a liquid nature, including waste in combined storm water and sanitary sewer systems.

(c) *Material into ocean waters.* Matter of any kind or description, but not limited to solid waste, incinerator residue, garbage, sewage, sewage sludge, munitions, radiological, chemical, and biological warfare agents, radioactive materials, chemicals, biological and laboratory waste, wrecked or discarded equipment, rock, sand, excavation debris, and industrial, municipal, agricultural, and other waste. It does not mean oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredge material and does not mean sewage from vessels including human body wastes and wastes from toilets and other receptacles intended to receive or retain body wastes.

(d) *Ocean waters.* Those waters of the open seas lying seaward of the baseline from which the territorial sea is measured, as provided for in the Convention on the Territorial Sea and the Contiguous Zone (15 UST 1606; TIAS 5639).

(e) *Dredged material.* Any material excavated or dredged from navigable waters.

(f) *Fill material.* Any material deposited or discharged into navigable waters which may result in creating fastlands or other planned elevations of lands beneath navigable waters of the United States.

(g) *Marine sanitation devices.* The following definitions apply to Marine Sanitation Devices:

(1) *Marine sanitation device (MSD).* Any equipment for installation in a vessel which is designated to receive, retain, treat or discharge sewage, and any process to treat sewage. Four types of marine sanitation devices are defined:

(i) *Type I.* A "flow-through" MSD certified by a DOD Component or the US Coast Guard as being capable of producing an effluent with a fecal coliform bacterial count of not more than 1,000 per 100 milliliters and no visible floating solids.

(ii) *Type II.* A "flow-through" MSD certified by a DOD Component or the US Coast Guard as being capable of producing an effluent with a fecal coliform baterial count of not more than 200 per 100 milliliters and total suspended solids of not more than 150 milligrams per liter.

(iii) *Type III-A.* A "nonflow-through" MSD which is designed to treat and hold the treated sewage. This type would include reduced-flush devices which ultimately evaporate or incinerate the sewage to a sterile sludge or ash.

(iv) *Type III-B.* A collection, holding, and transfer (CHT) system, consisting of: Drain piping, holding tanks, pumps, valves, connectors, and other equipment used to collect and hold shipboard sewage waste for subsequent transfer to a shore sewage system, sewage barge, or for overboard discharge in unrestricted waters. Also known as Type III-B MSD.

(2) *Flow-through device.* Any marine sanitation device (Type I or Type II) which discharges treated sewage waste overboard.

(3) *Nonflow-through device.* Any marine sanitation device (Type III) which collects, holds and/or treats sewage or holds the untreated or treated sewage onboard for disposal in legal areas or for transfer to proper shore facilities. This type includes those devices which collect, evaporate or incinerate the sewage to a sterile sludge or ash, as well as collection and holding systems.

(4) *Vessel.* Every ship or watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on the navigable waters of the United States.

(5) *Vessels owned and/or operated by the US Army.* Those vessels owned by or bareboat chartered to the US Army.

(6) *New vessel.* Any vessel on which first construction was initiated on or after April 1, 1976.

(7) *Existing vessel.* Any vessel on which first construction was initiated prior to April 1, 1976.

(8) *Sewage.* Human body wastes and wastes from toilets or other receptacles intended to receive human body wastes.

(9) *Discharge.* Includes, but is not limited to, any spillings, leaking, pumping, pouring, emitting, emptying, or dumping.

(10) *Fresh water lakes, reservoirs, and impoundments.* Fresh water bodies whose inlets or outlets prevent the ingress or egress of vessels subject to this regulation; rivers not capable of interstate navigation by vessels subject to this regulation.

§ 650.54 Policy.

It is the policy of the Army to:

(a) Conserve all water resources.

(b) Control or eliminate all sources of pollutants to navigable waters or ground-waters by on-post treatment of wastes by joining regional or municipal sewage treatment systems or by employing recycling processes.

(c) Comply with applicable Federal, State and regional pollutant effluent limitation standards.

(d) Demonstrate leadership in attaining the national goal of zero pollutant discharge.

(e) Provide drinking water that satisfies the potability standards published by the Public Health Service/EPA as interpreted by The Surgeon General of the Army (TSG) (§ 650.57).

(f) Cooperate with Federal, State and regional authorities in the formulation and execution of water pollution control plans.

(g) Comply with the requirements for permits for the discharge of pollutants into navigable waters (section 402 of the FWPCA and implementing regulations in 40 CFR Part 125); the transportation of material (other than dredged material) for the purpose of dumping it in ocean waters (section 102 of the Marine Protection, Research and Sanctuaries Act of 1972 and implementing regulations in 40 CFR Part 220); and for activities in or affecting navigable waters of the United States; and the discharge of dredged or fill material in navigable waters; and the ocean disposal of dredged material (sections 9 and 10 of the River and Harbor Act of 1899, section 404 of the FWPCA, and section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 and implementing regulations in 33 CFR Part 324).

§ 650.55 Responsibilities.

(a) The Chief of Engineers will exercise Army staff responsibility for directing and coordinating the Army water pollution abatement program for both fixed and mobile facilities. Specifically the Chief of Engineers will—

(1) Promulgate policy and regulations on water resources management which reflect Department of Defense guidance and pertinent provisions of water pollution control laws.

(2) Develop long range policies on wastewater treatment to achieve the 1983 water quality objectives and 1985 goals of Pub. L. 92-500.

(3) Manage the identification, reporting, engineering, design and construction of projects required to control and monitor discharges in accordance with applicable Federal, State and regional water quality standards.

(4) Monitor water conservation practices for the purpose of identifying new potential uses for wastewater and methods for reducing water consumption.

(5) Publish policies on the control and disposal of sewage, galley, bilge and marine engine wastes.

(6) Provide guidance and direction to Army facilities in the preparation of applications for operating permits required by the FWPCA, Marine Protection, Research and Sanctuaries Act of 1972, and River and Harbor Act of 1899.

(7) Monitor the status of all FWPCA and ocean dumping permits and reports submitted in accordance with permit provisions.

(8) Coordinate the promulgation of new or revised water criteria and standards with TSC.

(9) Monitor master plans, construction plans and activities, and natural resource conservation activities to control surface water runoff and minimize erosion.

(10) Review and comment on NPDES and ocean dumping permits issued by EPA to Army installations.

(b) The Surgeon General will—

(1) Monitor health and welfare aspects of water and wastewater control criteria and standards promulgated by Federal and State agencies.

(2) Establish and conduct water supply surveillance programs to ensure the maintenance of adequate potable water for Army installations.

(3) Accumulate, evaluate and disseminate information on water pollution conditions that may adversely affect the health of man and animals.

(4) Conduct field investigations and special studies to determine the effectiveness of wastewater treatment and recommend corrective measures when appropriate.

(5) Provide technical consultation on the health, welfare, and environmental aspects of water and wastewater treatment programs and activities.

(6) Coordinate the development of water and wastewater treatment standards, procedures, surveys and studies with the Chief of Engineers.

(7) Review and comment on NPDES and ocean dumping permits issued by EPA to Army installations.

(8) Assist the Chief of Engineers in the formulation of plans and design criteria for water monitoring systems.

(9) Maintain a record of all FWPCA and ocean dumping permits issued to Army installations, perform a technical evaluation of FWPCA and ocean discharge monitoring reports received, and notify submitting installations of noted deficiencies.

(10) Report semi-annually on the status of NPDES permits and NPDES discharge monitoring reports to the

HQDA (DAEN-ZCE) Washington, DC 20310, (RCS-ENG 237).

(c) Major Army commands (MACOM) have the responsibility to ensure that the[illegible]d their subordinate elements develop programs which will—

(1) Identify, quantify, and report all sources of water pollution and take appropriate action to eliminate or reduce them to acceptable levels. This applies to all Army facilities to include all buildings, installation structures, land, utilities, equipment, aircraft, vessels and other vehicles and property controlled by or constructed or manufactured for the purpose of leasing to the Army.

(2) Program and budget funds for remedial water pollution control projects to ensure compliance with applicable standards by statutory imposed dates.

(3) Establish routine wastewater control monitoring programs to insure compliance with discharge limitations established by regulatory agencies and adherence to proper waste treatment operational procedure as specified in TM 5-665, TM 5-814-3, and TM 5-814-6.

(4) Obtain permits from the appropriate EPA Regional Administrator for all discharges of pollutants from installations and activities into navigable waters as required by NPDES and for the transportation of materials for the purpose of dumping them into ocean waters and comply fully with the provisions of such permits.

(5) Obtain permits from the appropriate District Engineer for all other actions in or affecting navigable waters of the United States, including the discharge of dredged or fill material in such waters, and for the transportation of dredged material for the purpose of dumping it in ocean waters.

(6) Control the discharge of sewage and bilge waste from vessels in accordance with US Coast Guard, EPA, DOD or State regulations.

(7) Control the runoff of surface waters to minimize soil erosion, downstream flooding and pollution of waterways by sediments and contaminants.

(8) Conserve water resources by instituting regulatory measures where needed and by the judicious use of wastewater for consumptive purposes.

(9) Provide all personnel with drinking water that meets the quality standards specified by The Surgeon General.

(10) Commander, U.S. Army Materiel Development and Readiness Command will develop appropriate pollution control devices and retrofit vessels in the inventory required to meet specified standards.

§ 650.56 Related publications.

(a) Public Law 92-500; Federal Water Pollution Control Act Amendments of 1972 (84 Stat. 100, 33 U.S.C. 1163).

(b) Public Law 92-532; Marine Protection, Research, and Sanctuaries Act of 1972.

(c) Rivers and Harbors Act of 1899 (33 U.S.C. 401-413).

(d) Executive Order 11752, "Prevention, Control and Abatement of Environmental Pollution at Federal Facilities," December 17, 1973.

(e) TB 55-1900-206-14, Control and Abatement of Pollution by Army Watercraft.

(f) AR 56-9, Watercraft.

STANDARDS AND PROCEDURES

§ 650.57 Water supply standards.

Potable water supply standards must meet, as a minimum, the standards set by the U.S. Public Health Service (42 CFR 72.201-207)/EPA as interpreted by The Surgeon General of the Army (TB MED 229).

§ 650.58 Water quality standards.

(a) Under the provisions of Pub. L. 92-500 it is the responsibility of the States to establish water quality standards and formulate an overall plan for achieving and enforcing these water quality standards. These criteria are based on the quality of water necessary to achieve and maintain use classifications of water such as recreation, fish and wildlife propagation, public water supply, and industrial and agricultural uses. States are also required to establish effluent discharge limitations necessary to achieve and maintain the desired use classification. For Army installations, implementation and enforcement of the applicable federally or State developed effluent limitations, and water quality standards are accomplished by the regional headquarters of the Environmental Protection Agency through the National Pollutant Discharge Elimination System.

(b) The following effluent limitations are minimum standards which have been established pursuant to Pub. L. 92-500. More stringent effluent limitations may be established by the Administrator, EPA, to attain or maintain the water quality standards established by the State. Permissible effluent limitations, whether based on Federal or State water quality standards or on water quality criteria will be specified by the EPA Regional Administrator in the NPDES permit issued for each point of discharge.

§ 650.59 Effluent limitations.

(a) Domestic waste water effluents:

(1) As an interim limitation, all effluents from predominately domestic sources will be receiving the equivalent of secondary treatment as a minimum by July 1, 1977.

(2) By July 1, 1983, domestic wastewater limitations will be based on the best practicable waste treatment technology. Planning for 1983 discharge requirements will be clarified pending case by case evaluation of EPA criteria for 1983 which should be contained in NPDES permits to be issued in the 1977-1980 time frame. It may be assumed that the 1983 standards would require some form of advanced wastewater treatment, (i.e., phosphate, nitrate or carbonate removal; very low values of biochemical/chemical oxygen demand, suspended solids and fecal coliform bacteria; and minimal fluctuations in pH and temperature (/).

(b) Industrial wastewater effluents:

(1) As an interim limitation all effluents from existing industrial sources will be treated by processes employing the "best practicable control technology currently available" by July 1977. Guidelines and standards defining effluent limitations for best practicable control technology currently available are published under 40 CFR Parts 401 through 447. At present only two industrial categories apply to Army activities; these are 40 Part CFR 413, Electro, plating, and 40 CFR Part 415, Inorganic Chemicals. EPA will publish regulations in the form of effluent limitations guidelines and standards of performance and pretreatment for ammunition production facilities at a later date. DAEN-ZCE will issue guidance as appropriate.

(2) By July 1, 1983, treatment of existing industrial wastewater effluents will employ the "best available technology economically achievable." Effluent limitations based on the best available technology economically achievable have been defined and are published in previously mentioned 40 CFR Parts 401 through 447.

(3) Effluent limitations for new sources are in most cases based on best available technology economically achievable and, therefore must necessarily meet the "1983 standards." These effluent limitations are also published with the guidelines and standards in 40 CFR Parts 401 through 447.

(c) *Oil.* The discharge of oil or effluents containing oil is limited by the quality determined to be harmful to the public health or welfare; or by applicable water quality standards; or by the amount which will cause a film or sheen upon a discoloration of the surface of the water or adjoining shorelines; or cause a sludge or emulsion to be deposited beneath the surface of the water or adjoining shorelines (40 CFR Part 110 and Subpart F of this part).

(d) *Pretreatment Standards (40 CFR Part 128).* Nondomestic wastewater effluents from Army installations which are discharged to regional or municipal sewage treatment works must comply with the following limitations:

(1) Effluents will be treated sufficiently to remove wastes which: Would create a fire or explosion hazard, have pH lower than 5.0, would obstruct flow in sewers or interfere with proper operation of the works; or are introduced at an excessive flow or pollutant discharge rate likely to interfere with proper treatment.

(2) If the characteristics of the effluent qualify the Army installation as a

"major contributing industry" and the effluent contains "incompatible pollutants" then the effluent will be pretreated prior to discharge, employing technology described in § 650.59(b)(1), (2) or (3) depending on whether the effluent is from an existing or new source. Such pretreatment is necessary to prevent the discharge of any pollutant into regional or municipal treatment works which may interfere with, pass through or otherwise be incompatible with such works.

(e) *Toxic and hazardous pollutants.* The EPA determines and publishes a list of toxic and hazardous pollutants and issues effluent or dumping limitations for these substances. Limitations often include absolute prohibition against discharge. Both The Surgeon General and the Chief of Engineers will maintain a list of such pollutants for which effluent guidelines are issued or are pending and will monitor suspected toxic pollutants until a decision on the actual effects is made. The discharge of these toxic pollutants from all Army facilities will comply with the limitations set by the EPA. In all cases, the discharge of a suspected toxic pollutant will be strictly controlled or prohibited until a determination is made as to the potential dangers involved and effluent limitations are established by the EPA and The Surgeon General of the Army.

(1) *Prohibited substances.* The toxic pollutants which have been prohibited from effluent discharges are listed in 40 CFR Part 129, EPA Regulations on Listing Toxic Pollutants. Other prohibited substances which may not be ocean dumped are listed in 40 CFR 227.21.

(2) *Hazardous substances.* The EPA listing of hazardous substances which are subject to strict effluent limitations will be addressed in 40 CFR Part 116.

(f) *Thermal pollution.* Thermal discharges are subject to the best practicable and best available control technology requirements, as are other nondomestic pollutants. Thermal pollutant standards vary depending on temperature of the receiving water, the temperature and relative volume of the effluent, and effects such discharges will have regarding the protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife in and on the receiving water. Therefore, cases which involve thermal pollution are highly individual and are generally limited to large sources of thermal pollution such as steam electric power plants (40 CFR Part 423).

(g) *Watercraft.* Effluent limitations from watercraft are established by the US Coast Guard (33 CFR Part 159), Department of Defense (DOD Dir 6050.4), EPA (40 CFR Part 140) and the States. Department of the Army will comply with standards and procedures set by the Office, Secretary of Defense (DOD Dir 6050.4) and by TB 55-1900-206-14, Control and Abatement of Pollution by Army Watercraft.

(1) *Nondomestic waste discharge limitations.* Nondomestic waste (i.e., bilge, fuels, lubricants and other nonhuman wastes) discharges to navigable waters are prohibited (40 CFR Part 110). Exempt from this prohibition are discharges of oil from properly functioning vessel engines, provided such normal discharges are not deemed harmful.

(2) *Domestic waste discharge limitation.* (i) EPA (40 CFR Part 140), establishes Federal effluent limitation standards for the discharge of sewage from vessels. All vessels (ships, boats, and other watercraft) owned and operated by the US Army within the navigable waters of the United States, except those not equipped with installed toilet facilities, must be equipped to meet marine sanitation device (MSD) standards. Only those vessels scheduled to be decommissioned, inactivated, sold or otherwise disposed of by the end of FY 1981 are excluded from these provisions. In order to meet EPA standards, DARCOM will develop MSD certification testing, acceptance, operation and maintenance procedures for the Army based on guidance provided in paragraph VII, DOD Directive 6050.4. The following standards will apply:

(A) Marine sanitation devices will be designed and operated to prevent the overboard discharge of untreated or inadequately treated sewage or any waste derived from sewage, into the navigable waters of the United States, except as hereinafter provided.

(B) Any existing vessel equipped with a Type I MSD which was installed on or before April 1, 1976, or within 3 years thereafter, is in compliance so long as the device remains satisfactorily operable. Any existing vessel not equipped with any MSD on or before this date must install either a Type II or Type III MSD on or before April 1, 1981, except those vessels not equipped with installed toilet facilities.

(C) Any existing vessel equipped at any time with a Type II or Type III MSD and certified by either DARCOM or the US Coast Guard, is in compliance so long as the long device remains satisfactorily operable.

(D) All new vessels will be equipped only with a Type II or a Type III MSD certified by DARCOM or the US Coast Guard, on or before April 1, 1978, except those vessels not equipped with installed toilet facilities.

(E) Any vessel operating on a freshwater lake or impoundment will comply with the applicable EPA "no discharge" standard and regulations of the US Coast Guard, to include compliance schedules. If the vessel is equipped with any MSD, the device will be modified as necessary to preclude accidental discharge into such waters.

(F) Prior to the compliance dates stated above, more rigid or compelling standards which are imposed by State, regional or local jurisdictions may prevail. After compliance, a more rigid standard will not take effect sooner than April 1, 1981.

(G) Any "no discharge" standard will not apply until the Administrator, EPA, determines that adequate facilities for safe and sanitary removal and treatment of sewage from all vessels are reasonably available for such waters to which the prohibition applies, or that the water quality requires a more stringent standard than that provided by 40 CFR Part 140.

(H) Operators will not be exposed to hazardous chemicals or conditions during normal operation and maintenance of MSD's.

(ii) Because of the above standard, MSD's under development or procurement for new vessels or to replace existing equipment should be selected with "no discharge" as a possible parameter and that full consideration be given to systems based on holding tanks rather than actual treatment systems. DARCOM will ensure that appropriate Environmental Protection Control Reports (RCS DD-I&L(SA) 1383) on MSD retrofit costs are forwarded through channels to HQDA (DAEN-FEU) WASH, DC 20314 in accordance with chapter 10, this regulation.

(iii) MSD's will be so designed to preclude contamination of potable water supplies.

§ 650.60 Ocean dumping standards.

The Marine Protection, Research and Sanctuaries Act of 1972 (Pub. L. 92-532) and EPA prohibit the dumping of certain materials into ocean waters and controls the dumping of all other materials. Army controlled activities will comply with the regulations and standards set by this act and notify HQDA (DAEN-ZCE) WASH DC 20310 of all permit requests. (40 CFR Parts 220-227 and 33 CFR 323.324).

§ 650.61 Activities in navigable waters.

The construction of any structure in or over any navigable water of the United States, the excavation from or depositing of material in such waters, or the accomplishment of any other work affecting the course, location, condition or capacity of such waters must have prior approval of the Chief of Engineers or his authorized representative. Authority for such work is provided by issuance of a permit. Policy, practice and procedures are contained in 33 CFR Part 322.

§ 650.62 Storage of hazardous materials.

Storage facilities for materials which are hazardous to health, and for oils, gases, fuels or other materials capable of causing water pollution, to either surface or ground waters, if accidentally discharged, will be so located as to minimize or prevent such spillage. Measures necessary to entrap spillage, such as catchment areas, relief vessels, of entrapment dikes, will be installed so as to prevent and/or contain accidental pollution of water (Subparts F and I of this part).

§ 650.63 Water supply treatment procedures.

Water supplies will be monitored and, where necessary, treated in accordance with AR 420-46, Water and Sewerage, TB MED 229; AR 115-21, Hydrologic Services for Military Purposes and AR 115-20, Field Water Supply.

§ 650.64 Water conservation.

(a) *Reduce consumption.* All uses of water will be periodically surveyed and action taken to reduce water consumption wherever possible. The design and construction of new facilities and processes will consider minimized consumption of water, in particular potable water, as a major parameter. Vegetation and landscaping will be selected for the particular climate and geographical location so as to minimize or eliminate the need for irrigation.

(b) *Reuse-recycle.* In addition to reducing initial water consumption, water conservation measures will include the reuse or recycling of wastewater whenever practicable. The design methodology for new or for modification of old facilities and processes will identify potential re-use or recycling of wastewater alternatives and such alternatives will be selected whenever it is determined economically competitive with "once through" processes. Examples include closed cycle cooling systems for power plants and the use of land based sewage treatment systems.

(c) *Erosion Control.* Operations will be scheduled and designed to reduce or eliminate the destruction of vegetation and other ground cover which prevents erosion and stream siltation. Siting of new facilities will consider topography and soil conditions to reduce construction in areas sensitive to erosion. Construction techniques and methods that minimize erosion will be identified in all construction contracts and design/construction specifications. Large parking lots, roof areas, aircraft facilities, and roads which result in rapid runoff will be minimized wherever practicable. Periodic surveys will be made to identify areas where erosion has occurred and action will be initiated to control further erosion such as planting vegetation; controlling and, where necessary, impounding stormwater from areas of rapid runoff.

§ 650.65 Minor industrial and municipal operations.

Wastewater discharge from minor industrial and municipal facilities such as wash racks, engine steam cleaning operations, water treatment plant backwash, swimming pool filter backwash, and other similar activities will be connected to the sanitary sewer wherever feasible. It should be noted that effluent from these activities not connected to sanitary sewers requires an NPDES discharge permit. To eliminate costly and difficult treatment and monitoring programs all possible efforts should be directed to connecting with the sanitary lines. At remote locations, a holding tank may be used which is sized to hold all drainage between pumpouts. After pumpout, the wastewater will be transported to another location for treatment and disposal. Other alternatives include onsite treatment which would require a discharge permit, or a closed cycle system which would treat and re-use the wastewater. In the latter case, if there were no discharges, a permit would not be required.

§ 650.66 NPDES permits.

The NPDES permit program (40 CFR Part 125) requires that all discharges of pollutants from point sources into navigable waters, (§ 650.53(a)(6)), will be regulated by a discharge permit. This applies to domestic and industrial wastewater. The permit requirement does not extend to discharges from separate storm sewers except where the storm sewers receive industrial, municipal and agricultural wastes or runoff or where the storm runoff discharge has been identified by the Regional Administrator, the State water pollution control agency, or an interstate agency as a significant contributor of pollution. Also exempted are Army controlled properties (except when needed for public use) which are leased to contractors or others under authority of 10 U.S.C. 2657. It is the administrator of the lease who will monitor and institute corrective actions as necessary to insure that the leasee obtains and adheres to the NPDES permit.

(a) *Permit application.* When it is determined that an NPDES permit is required, permit applications will be requested from the applicable EPA Regional Office.

(b) *Draft permits.* A draft permit will be issued based on the permit application. The draft permit will contain effluent limitations necessary to meet water quality standards; compliance schedules identifying dates on when the effluent limitations will be met, monitoring programs identifying type of pollutant to be monitored, method of sampling and analysis, frequency of sampling; and method and frequency of reporting monitoring program results.

(c) *Draft permit review.* EPA is required to provide copies of the draft permit to the installation commander, the state, and the general public for review and comment. In general there will be not less than thirty (30) days in which to provide comment before the final permit is issued. MACOM's will provide copies of all NPDES permits (both draft and final) received from EPA to the U.S. Army Environmental Hygiene Agency, ATTN: HSE-EW, Aberdeen Proving Ground, MD 21010. USAEHA will accomplish: A technical review of each NPDES permit received, provide advice or assistance to the installation commander, through appropriate command channels establish liaison with the EPA, as necessary, to clarify and discuss permit conditions and provide written comment back to the permittee for subsequent passage of written comments to the appropriate EPA Regional Office. Installation commanders will report potential problems arising from the terms of the permits which could impact on the operational capability of the installation to the HQDA (DAEN-FEU) Washington, DC 20314 through appropriate command channels. In addition, the permits will contain instructions pertaining to reporting changes in quality or quantity of wastewater.

(d) *Monitoring reports.* The terms of the permit will, in general, require the monitoring of all wastewater discharges and a periodic report to the EPA Regional Administrator, National Pollutant Discharge Elimination System Discharge Monitoring Report (RCS EPA-1002). In order to determine the effectiveness of the treatment and monitoring programs, copies of all monitoring reports will be forwarded to the USAEHA, ATTN: HSE-EW Aberdeen Proving Ground, MD 21010. Reports are made in accordance with frequency prescribed by each NPDES permit on form EPA 3320-1 (10-72). Forms are available from appropriate EPA Regional Office. (See figure 9-1 and table 9-3 for location and addresses).

(e) *Compliance schedules.* (1) NPDES permits will contain a schedule of compliance with regard to any discharge which is not in compliance with applicable effluent standards and limitations, applicable water quality standards, and other applicable requirements. This schedule will be rigidly enforced. The terms of the permit will, in general, require that the permittee provide the EPA Regional Administrator with written notice of the permittee's compliance not later than 14 days following each interim date of compliance. Copies of this notice will be provided to the operating command and to USAEHA.

(2) In the event of noncompliance with the interim or final requirements, the permittee will immediately provide written notification to the EPA Regional Administrator with information copies to the appropriate operating command, USAEHA and DAEN-ZCE and where necessary, will request a revision to the compliance schedule following the procedure established under 40 CFR 125.23.

(f) *Installations discharging to regional or municipal treatment works.* Permits are not normally required for discharge of domestic wastewater to regional or municipal sewage treatment facilities. However, those installations which find that pretreatment prior to discharge is required may be required to file for a permit.

(g) *Inspections.* The EPA Regional Administrator may, under authority of 40 CFR 125.13 and 125.22, make site visits and inspections for the purpose of evaluating facilities prior to issuance of an NPDES permit and for the purpose of monitoring compliance with the terms of an issued permit.

(h) *Cooperation with State and regional authorities.* The EPA Regional Administrator, or his designated representative has full and legal authority to make site inspections of Army facilities. However, installation commanders will on the basis of reasonable, specific requests extend the same privileges to authorized state and regional pollution control authorities.

(i) *Security restrictions.* When representatives from Federal, State, or regional environmental pollution control agencies inspect facilities, examine operating records, and make tests to determine adherence to environmental performance specifications, security requirement must be met and the inspectors will be accompanied by either engineer or medical technical representatives designated by the appropriate major Army commander.

(j) *Information requests.* The EPA regional office is the responsible Federal agency regarding enforcement of all water pollution control requirements at Federal facilities in that region. Water pollution control information emanating from Federal facilities should go through the applicable EPA regional office. Therefore, requests for permit related information by state or regional authorities or by responsible members of the general public, should be directed to the applicable EPA regional office (Subpart A of this part).

§ 650.67 Ocean dumping permits.

Permits for the dumping or discharge of materials into ocean waters, other than transportation of dredged material for purpose of dumping in ocean waters, are issued by the EPA. There are two types of permits, one which governs a general category of dumping and one which governs the dumping of special materials. The Administrator of EPA can issue general permits. The authority for issuing most special permits has been delegated to the EPA Regional Offices. Controls governing ocean dumping can be found in 40 CFR Parts 220 through 227, "Regulations and Criteria, Transportation for Dumping, and Dumping of Material into Ocean Waters." Most permits require information on the type of pollutant or effluent being discharged or dumped, its quantity and frequency and location of discharge. Permits require monitoring and documentation.

§ 650.68 Corps of Engineers permits.

The construction of any structure in or over a navigable water of the United States, the excavating from or depositing of dredged or fill material in such waters, the accomplishment of any other work affecting the course, condition, location, or capacity of such waters, the discharge of dredged or fill material in navigable waters, and the transportation of dredged material for the purpose of dumping it in ocean waters requires a permit from the Corps of Engineers and will be processed in accordance with 33 CFR 209.120. Application for this permit is made to the local District Engineer. Applications are available from Corps of Engineers District Offices and will be completed for all projects or activities not under the design and supervision of the Chief of Engineers.

§ 650.69 State permits.

(a) Cooperating with and providing information to State and regional authorities does not include making application for State permits of any kind nor obtaining a water quality certification from the State for any activity involving the discharge of a pollutant into navigable waters. Where information or data is to be provided a State authority on a prescribed registration form and authenticated, Army installation commanders will comply with all reasonable requests and forward same with a disclaimer that:

> While Federal law does not require military installations to apply for State permits or obtain State water quality certifications, this installation is desirous of complying with the objectives of State and Federal pollution control programs. However, completion of this form is not to be construed as an application for permit. To the best of my

knowledge, the information presented herein is correct.

Under unusual circumstances, when the installation commander considers it prudent to respond contrary to the above guidance, request for waiver will be submitted through appropriate command channels to HQDA (DAEN-ZCE) WASH DC 20310.

(b) In all cases, waiver request will include a legal opinion by the staff judge advocate of the installation concerned or of the next higher command having a staff judge advocate to insure legal sufficiency. Special attention should be given to questions involving registration of sources and compliance schedules to insure that the legal implications of such instruments are understood.

§ 650.70 Operator training and certification.

(a) Operators of water treatment works and sewage treatment works shall meet levels of proficiency consistent with operator certification requirements applicable to the State or region in which the facility is located. (AR 420-15, Certification of Utility Plant Operators and Personnel Performing Inspection and Testing of Vertical Lift Devices).

(b) Necessary training of water treatment works and sewage treatment works operators will be accomplished through programs sponsored by the State in which the facility is located. In the absence of such State or regional programs, training will be accomplished at qualified institutions designated by the MACOM.

§ 650.71 Waivers.

(a) No action which is contrary to the provisions contained in this subpart will be taken without first obtaining a waiver of the requirement from HQDA (DAEN-ZCE) WASH DC 20310.

(b) Waivers may be granted only if the President or the Administrator of EPA finds that the technology to implement such standards is not available or operation of the facilities in question is required for reasons of national security. Requests for such waivers will not be considered by HQDA unless it can be clearly and conclusively demonstrated that operation of the facilities in question and the proposed construction or modification meets the above criteria. Requests for waivers will be forwarded through command channels to HQDA (DAEN-ZCE) WASH DC 20310.

§ 650.72 Investigation of complaints.

Each operating commander will establish procedures to investigate water pollution complaints and allegations from individuals and water pollution control authorities. In the case of a legal action or potential legal action, the matter will be reported immediately through judge advocate general channels to HQDA (DAJA-RL) WASH DC 20310.

§ 650.73 Water Pollution Control Report—(RCS DD-I&L (SA) 1383).

(a) The water pollution control report portion of the Environmental Protection Control Report is designed to provide HQDA with data on a phased and coordinated plan for control and abatement of water pollution for submission to OSD and OMB; and for development of the five-year Army Environmental Program. Detailed instructions for preparing and submitting this report are provided in Subpart J of this part.

(b) The report will cover all portions of the water pollution control program where expenditure of funds for corrective actions is required. This includes all fixed facilities, monitoring equipment, watercraft and other mobile facilities.

Subpart D—Air Pollution Abatement

GENERAL

§ 650.81 Purpose.

The provisions contained in this chapter implement the Clean Air Act of 1970 (Pub. L. 91-604 as amended) and the applicable Federal and State Regulations issued pursuant to this Act; Executive Order 11752, Prevention, Control, and Abatement of Environmnetal Pollution at Federal Facilities; and DOD Instruction 4120.14, Air and Water Pollution Control.

§ 650.82 Goal and objectives.

It is the Department of the Army's goal to reduce the emission of pollutants into the air from both stationary and mobile sources to the lowest practicable limits, and at the earliest practicable date. Objectives for obtaining this goal are to—

(a) Identify air pollution emission sources, determine the kinds and amounts of pollutant emissions, and reduce pollutant levels to those specified by Federal, State, interstate, or local substantive standards.

(b) Procure commercial equipment and vehicles with internal combustion engines that meet emission standards, except for combat vehicles specifically excluded by Environmental Protection Agency (EPA) regulations.

(c) Insure that each piece of military equipment is designed, operated, and maintained so that it meets air emission standards unless specifically exempted.

§ 650.83 Explanation of terms.

(a) *Ambient air quality standards.* Those standards established pursuant to the Clean Air Act, for protecting public health and welfare.

(b) *Emission standards.* Permissible limits of emissions established by Federal, State, interstate and local authorities to achieve ambient air quality standards.

(c) *Implementation plans.* Plans developed and administered by a State to designate the methods used to implement, maintain, and enforce ambient air quality standards in air quality control regions. The plans present an inventory of emissions and their source; a comparison of current emissions with current ambient air quality conditions; amount of emission reduction necessary to attain the ambient air quality standards for each category of emission sources; and plans, including transportation control plans, for achieving emission reductions.

(d) *Mobile sources.* Vehicles, aircraft, watercraft, construction equipment and other equipment using internal combustion engines as the means of propulsion.

(e) *Monitoring.* The assessment of emissions and ambient air quality conditions, using techniques such as emission estimates, visible emission reading, diffusion or dispersion estimates, sampling, or measurement with analytical instruments.

(f) *Motor vehicle.* Any self-propelled vehicle designed for transporting persons or property on a street or highway (sec. 213, Clean Air Act). Further defined in 40 CFR Part 85.

(g) *National Emission Standards for Hazardous Air Pollutants.* EPA emission standards established for specified hazardous air pollutants emitted by both new and existing stationary sources. (Sec. 112, Clean Air Act.)

(h) *Parking facility.* Any off-street area or space, lot, garage, building or structure, or combination or portion thereof, in or on which motor vehicles are parked.

(i) *Standards of performance for new stationary sources.* Emission standards established for specified pollutant sources, such as industrial facilities (Sec. 111. Clean Air Act).

§ 650.84 Policies.

(a) Control and monitor fixed air pollutant sources to ensure compliance with Federal, State, interstate and local substantive air emission standards.

(b) Monitor ambient air quality in the vicinity of Army industrial-type activities, or cooperate with others in such monitoring to determine whether current ambient air standards are being met.

(c) Control emissions from mobile sources in accordance with Federal regulations or by State regulations when authorized by law.

(d) Cooperate with Regional EPA and State authorities in achieving the objectives of State Implementation Plans.

§ 650.85 Responsibilities.

(a) The Chief of Engineers will—(1) Publish the basic policies and procedures for the identification, reporting, and programming of projects to control and monitor air pollutants emitted by Army fixed facilities and mobile sources, including aircraft and watercraft (DAEN-ZCE).

(2) Report requirements for projects to control sources of air pollution and

the installation of air quality monitoring systems in accordance with this regulation and DOD Instruction 4120.14.

(3) Process requests for exemption from compliance in accordance with the provisions of the Clean Air Act and Executive Order 11752.

(4) Include in the Army R&D Program such research as may be needed or required for the development of technology to control Army-unique air pollutants.

(5) Perform technical review and evaluation of remedial projects for the control of existing sources of air pollution at fixed facilities and insure that provisions are made for air pollution control in the design of new structures and facilities.

(6) Coordinate the requirement of the adoption of new air emission standards for the Army fixed facilities with The Surgeon General.

(7) Provide technical advice and assistance for the control of air pollution in the operation and maintenance of fixed facilities.

(8) Ensure all new construction or major modifications are reviewed by the applicable US EPA Regional Office to ensure compliance with the State Implementation Plan.

(b) The Deputy Chief of Staff for Logistics will issue implementing policies, procedures and instructions for the control of air pollution which pertain to the maintenance, repair and modification of mobile sources including vehicles, aircraft and watercraft.

(c) The Deputy Chief of Staff for Research, Development and Acquisition will—(1) Conduct research and development programs designed to provide low-pollution, high efficiency engines for Army vehicles, mobile power sources, aircraft, and watercraft; and for the development of clean burning fuels.

(2) Incorporate air pollution controls, where required, in the development of new equipment and weapons systems to the maximum extent possible without degrading the operational capabilities to an unacceptable level.

(3) Insure that mobile equipment and engines developed for the Army comply with applicable current and projected Federal emission standards to the extent that priority defense and national security requirements permit.

(d) The Surgeon General, will—(1) Monitor the health and welfare aspects of the air pollution control program within the Department of the Army.

(2) Issue health and medical policy guidance on air pollution control and abatement.

(3) Consult with COE and appropriate commanders in the establishment of air pollution control standards which are unique to the Army.

(4) Provide staff assistance and guidance on the health and environmental aspects of management of hazardous and toxic air pollutants.

(5) Provide support to the basic Army R&D Program in terms of identification/designation of R&D needs.

(6) Review proposed Federal, State, interstate and local emission/ambient air quality standards and coordinate DA input to the standard-setting process.

(e) Major Army commanders will—(1) Develop a program, consistent with this regulation and DOD guidelines to control and monitor air pollutant emissions from fixed and mobile facilities to comply with applicable Federal, State, interstate and local emission standards and ambient air quality standards.

(2) Ensure that personnel having responsibilities for controlling air pollution emissions (e.g. equipment operators and mechanics, heating plant operators, etc.) are properly trained to perform such duties. Further, provide training in the inspection, test and maintenance of pollution control devices and emissions measurement equipment.

(f) Commanding General, US Army Materiel Development and Readiness Command. In addition to responsibilities assigned in paragraph (e) of this section, the Commanding General, US Army Materiel Development and Readiness Command will—(1) Require that Army materiel equipped with internal combustion engines meet air emission standards in effect at the time of manufacture as required by Federal or State regulations.

(2) Ensure that the manufacture, shipment, operation, maintenance and

final disposition of the materiel can be accomplished with a minimum emission of air pollutants.

(3) Provide in technical publications appropriate information and instructions on air pollution controls for engine driven equipment and on maintenance and monitoring procedures for minimizing pollutant emissions.

(g) Commanding General, US Health Services Command will—(1) Assist The Surgeon General in fulfilling his responsibilities for the health and welfare aspects of the air pollution control programs.

(2) Provide personnel for conducting field investigations and special studies on sources of air pollution and for recommending measures required to protect health and welfare, and to comply with stationary or mobile emission standards or ambient air quality standards (§ 650.92).

(h) Installation and activity commanders will—(1) Monitor air emission sources within their installations or under their control and identify air emission sources requiring remedial action to ensure compliance with emission standards and ambient air quality standards.

(2) Program remedial projects and funds to control and monitor air emission sources and ambient air quality to insure compliance with emission standards and ambient air quality standards.

(3) Cooperate with representatives of Federal, State and regional agencies in the formulation and execution of the Installation Master Plan, projects, and operations to ensure conformance with the State Implementation Plan. This includes conformance with new source emission standards; new source review procedures for Federal facilities; air pollutant control strategies such as transportation control plans, vapor recovery systems, and air pollution emergency episode plans; and the requirement to obtain a consent agreement for sources not in compliance with applicable air pollutant emission standards.

(4) Monitor the operation of motor vehicles to permit compliance with applicable Federal or State emission standards; or in the absence of applicable standards, to minimize smoke emissions.

(5) Continue mechanic and operator training programs in the prevention, control and abatement of pollution from mobile equipment.

§ 650.86 Reports.

Sources of air pollution will be identified and those requiring remedial action will be reported as specified in Subpart J of this part. An example of an exhibit prepared on a facility found not to be in compliance with specified standards is shown in figure 10-3.

§ 650.87 References.

See table 4-1 for related publications to be used in conjunction with this subpart.

STANDARDS AND PROCEDURES

§ 650.88 Standards.

(a) *General.* (1) The Clean Air Act establishes the legal basis for improving air quality and maintaining air quality for the protection of public health and welfare. Included in its provisions are the establishment of Air Quality Control Regions, which are approximately 250 in number; the establishment of National Ambient Air Quality Standards to identify the acceptable health and welfare levels which will be permitted for a given pollutant; allowable significant air quality deterioration zones which set the allowable amount of air quality deterioration; and the preparation of Implementation Plans by each State to provide for the attainment of primary standards by July 1, 1975 and secondary standards within a reasonable time. The Act also requires EPA to set Standards of Performance for new or modified sources of pollution; establishing source emission standards for hazardous air pollutants such as asbestos, beryllium and mercury; and controlling motor vehicle emissions.

(2) National Ambient Air Quality Standards prescribe maximum pollutant levels for particulate matter, sulfur oxides, carbon monoxide, photo chemical oxidents, hydrocarbons and nitrogen oxides (40 CFR Part 50). In all instances the States in their Imple-

mentation Plans have specified strict ambient air quality standards and established maximum levels for each pollutant based on the type of source. It is the applicable State standard that is to be achieved by each Army facility.

(b) *Fixed facilities*—(1) *Existing Sources.* Individual pollutants are to be controlled in accordance with national primary and secondary air quality emission standards, normally those promulgated by a State. The basic reference is 40 CFR Part 50.

(2) *New sources.* Specific Federal emission standards are applicable to certain types of new facilities such as large fossil fuel-fired steam generators, incinerators, sulfuric and nitric acid plants, etc. Detailed information is contained in 40 CFR Part 60.

(3) *Air quality control regions.* Air quality control regions, criteria, and control techniques are given in 40 CFR Part 81.

(4) *Hazardous air pollutants.* Certain hazardous air pollutants as such asbestos, beryllium, mercury, and vinyl chloride, which must be closely controlled are identified in Federal regulations promulgated by EPA. Refer to 40 CFR Part 61 and § 650.132 for guidance on control of asbestos during demolition and prohibition on use of sprayed asbestos materials for any purpose.

(c) *Mobile sources*—(1) *Commercial or commercially-adapted vehicles.* The manufacturer is required to certify these vehicles as meeting established emission standards of the year of manufacture. Basic reference is 40 CFR Part 85.

(2) *Military vehicles.* Certain military vehicles are excluded from the provisions of the Clean Air Act. Those not excluded will be certified by the manufacturer as meeting standards of the year of manufacture. Basic reference is 40 CFR Part 85.

(3) *Replacement engines.* (40 CFR Part 85).

(i) Light duty will meet the standards imposed at the year of vehicle manufacture.

(ii) Heavy duty will meet the standards imposed at the year of engine manufacture.

(4) *Aircraft.* Commercial or commercially adapted aircraft will comply with standards applicable to commercial aircraft in year of manufacture. Basic reference is 40 CFR Part 87.

§ 650.89 Assessment of air quality.

The impact of emissions produced by the operation of fixed and mobile sources on air quality will be included in an Environmental Impact Assessment (EIA) or Environmental Impact Statement (EIS) of any Army proposed action. Specific information as to existing regional air quality will be provided along with the changes or impact produced by the planned action. See also § 650.91 (b) on significant air quality deterioration zones for additional guidance. Particular attention will be given to vehicle emissions from both military and privately owned vehicles which, along with the vehicles in a nearby community, may constitute a significant source of air quality degradation and health hazard.

§ 650.90 Air pollution sources.

Common sources of air pollution which must be controlled include—:

(a) Heating plants over one million BTU per hour input.

(b) Incinerators.

(c) Large electrical power generating plants.

(d) Manufacturing processes/acid production facilities.

(e) Metal cleaning and treatment operations.

(f) Spray painting operations.

(g) POL storage and dispensing facilities.

§ 650.91 Air pollution abatement and control.

(a) Existing fixed sources of air emission are subject to Federal and State standards promulgated under the Clean Air Act. Those facilities found not in compliance with such standards are to be promptly identified and reported in accordance with the procedures outlined in Subpart J of this part. The programing and budgeting for remedial projects will conform with established procedures

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as in AR 37-40, AR 415-15, AR 415-25 and AR 420-10.

(b) New fixed sources or major modification to existing facilities which are a source of air emissions will be designed in accordance with applicable standards. Consultation with or review by State authorities on such projects will be through the Regional Administrator of EPA at the earliest practicable time in the planning process. Further, the State air pollution control agencies will establish significant air quality deterioration zones to control the introduction of pollutants into a specified area. Deterioration zones apply only to specific category of pollutant such as particulates or nitric oxides. Zones will be established by the State and are as follows:

Zone I—Very little to zero deterioration.
Zone II—Moderate deterioration.
Zone III—May deteriorate up to the national maximum.

Implementation of these standards for Federal facilities is through the EPA review of preconstruction plans. This regulation significantly increases the power of States to control land use patterns. Therefore, all Army plans for development and expansion of facilities must consider the deterioration zone within which the affected installation is located. (40 CFR Part 52).

(c) Emissions from new mobile sources such as vehicle and aircraft engines will be regulated at the time of manufacture and certified in accordance with Federal regulations issued by EPA. The alteration or removal of such emission controls installed on Army equipment is prohibited.

(d) The retrofit of military vehicles not equipped with emission control devices at the time of manufacture may be required by State regulation. Commanders of installations where such controls are required will take appropriate action to have such vehicles retrofitted and to insure that vehicles without emission controls are not operated unless a waiver or exemption as specified in § 650.95 is approved.

§ 650.92 Air emission monitoring and reporting.

(a) *Fixed sources.* Air emissions will be monitored in accordance with EPA approved State, regional or local regulations. The more common pollutants that are monitored include particulates, sulfur dioxide, carbon monoxide, oxides of nitrogen, hydrocarbons, and photochemical oxidants. Mandatory monitoring is imposed where more toxic emissions, such as nitric and sulfuric acid mists and asbestos, are released to the atmosphere. Such records on emissions as may be specified by EPA will be maintained and submitted as required.

(b) *Mobile sources.* The periodic monitoring of vehicle emissions serves to verify the effectiveness of emission controls and engine combustion efficiency. Installations having large vehicle fleets are encouraged to institute such monitoring procedures. No reports are required for these emission monitoring operations.

(c) *Technical assistance.* Technical assistance relating to health and welfare considerations of air pollution problems can be obtained from Commander, US Army Health Services Command (HSC-PA), Fort Sam Houston, TX 78234. Specific services available include:—

(1) Collection of pollutant emission data, operating criteria and performance standards for air pollution abatement equipment.

(2) Consultation on current Federal and State air quality regulations, standards and monitoring instrumentation.

(3) Source and ambient air evaluations to demonstrate compliance of existing sources with air quality regulations or standards.

(4) Provide assistance in collection and interpretation of air quality data for development of EIA or EIS.

§ 650.93 EPA Air Pollution Project review.

(a) The following type projects require review by the EPA Regional administrator for compliance with air pollution control standards prior to the initiation of construction:

(1) Large industrial or manufacturing facilities.

(2) Certain new parking facilities to be constructed in areas covered by Standard Metropolitan Statistical Areas and Transportation Control

Plans (38 major urban areas) are subject to preconstruction review by the EPA Regional Administrator (40 CFR Part 52). A review is required for parking facilities having a capacity of 250 or more vehicles, or where special restrictions are imposed on any additional parking. In such instances, an EPA permit must be obtained for new or modification of existing parking facilities which results in a net increase of 250 or more spaces when construction commences after January 1, 1975 or when a construction contract is signed after January 1, 1975. The basic references for State implementation plans and Transportation Control Plans are 40 CFR Part 51 and 40 CFR Part 52 respectively.

(b) At the request of the installation commander, such reviews may be coordinated with the Regional EPA office by the supporting Corps of Engineers District Office.

§ 650.94 Consent agreements.

(a) A consent agreement is required for each existing fixed source of air pollution which exceeds applicable standards. The consent agreement must contain a compliance schedule which contains a chronological list of dates (milestones) for each major action to be completed within the overall plan to bring a polluting source into compliance.

(b) Consent agreements are negotiated by installation representatives with EPA Regional Offices and State air pollution control authorities. Once approved by EPA, the specified date when the facility will comply with air emission standards becomes legally binding on the installation commander. Further, the installation is required to inform the appropriate EPA Regional Office and State authority in writing of any foreseen delays in meeting the intermediate dates contained in the compliance schedule and the reasons therefore prior to the scheduled completion date. When it becomes apparent that the ultimate compliance date cannot be met for reasons beyond the control of the installation commander, a revised consent agreement should be renegotiated. In such cases the EPA Regional Administrator will be notified as soon as possible. If renegotiation of a compliance schedule is rejected by EPA, the installation commander may forward a request for an exemption (§ 650.95) from compliance from standards when continued operation of the facility is essential to the conduct of the DA mission.

§ 650.95 Exemptions.

(a) An exemption from compliance with air pollutant emissions may only be requested for existing facilities. New facilities are to be designed to meet established standards.

(b) Requests for exemption from the Clean Air Act and regulations promulgated pursuant to the Act will be based on the continued operation of a particular facility being in the interests of national security and upon the requirements of Executive Order 11752. Such requests will be forwarded through channels to HQDA (DAEN-ZCE), WASH DC 20310 for necessary action.

§ 650.96 Transportation Control Plans.

(a) In addition to regulating the emissions from fixed sources, it may be necessary for a State to impose controls over transportation in order to achieve national ambient air standards. Large metropolitan areas, such as Los Angeles, California and Baltimore, Maryland are having to resort to such measures because the major portion of air pollution in those areas is caused by motor vehicles.

(b) Military installations and activities located within the area defined in EPA approved Transportation Control Plans are required to cooperate with local authorities in reducing vehicular traffic consistent with military requirements. Although the overall requirement is to reduce both military and civilian traffic, primary emphasis should be on reducing the use of privately owned vehicles. Consequently, Installation Transportation Control Plans which may be required for a particular region by Federal Regulations should be prepared and implemented as deemed necessary. Various control measures that will be considered include:

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(1) Instituting a command carpooling with carpool locator program,

(2) Encouraging the use or expansion of public transportation service,

(3) Restricting available parking areas to promote carpooling,

(4) Issuing preferred parking spaces to carpool cars, and

(5) Encourage the use of bicycles/walking for short on-post trips.

(c) Information regarding the existence of approved metropolitan Transportation Control Plans may be obtained from local air pollution control authorities or the Regional EPA Administrator.

§ 650.97 Air pollution emergency episode plans.

(a) Army installations or activities located in areas susceptible to air pollution episodes (smog conditions) will cooperate with local authorities in reducing air emissions during such emergency periods. Specific contingency plans are to be developed and coordinated with the local air pollution emergency episode plans to provide for:

(1) The curtailment of all but essential services;

(2) To provide for required mission activities;

(3) Announcement of notification procedures; and

(4) Instructions on those control measures to be invoked during the various phases of such episodes. The following control measures are to be considered in such contingency plans:

(i) Restrict use of private automobiles by requiring carpools or use of mass transit facilities.

(ii) Conduct an educational program on the hazards of air pollution episodes.

(iii) Publicize episode warnings and notification procedures.

(iv) Postpone all except mission-essential activities which produce air emissions; (e.g., vehicle use, operation of incinerators, etc.).

(v) Grant personnel administrative leave, but only as a last resort. This action will be coordinated with other DOD and Federal installations in the affected area.

(b) The shutdown or reduction of activities should be well coordinated with all installation personnel. The plan will be implemented on a test basis upon completion and should be reviewed and tested on a biannual basis thereafter.

(c) Government assets provided a contractor managing a Government-owned facility, are subject to the same use restrictions during an air pollution emergency episode as those imposed on a contractor by a State on the use of his private assets.

TABLE 4-1. RELATED PUBLICATIONS

Clean Air Act (42 U.S.C. 1857 et seq., as amended by the Air Quality Act of 1967. Pub. L. 90-148, by the Clean Air Amendments of 1970, Pub. L. 91-604, and by Technical Amendments to the Clean Air Act, Pub. L. 92-157).

AR 11-28 Economic Analysis and Program Evaluation of Resources Management.
AR 37-40 Army Production Base Support Program Report (RCS CSGLD-1123(R1) (MIN))
AR 40-4 Army Medical Department Facilities/ Activities.
AR 70-15 Product Improvement of Materiel.
AR 210-50 Family Housing Management.
AR 405-45 Inventory of Army Military Real Property.
AR 415-15 MCA Program Development.
AR 415-25 Real Property Facilities for Research, Development, Test and Evaluation (RHTE).
AR 415-35 Minor Construction.
AR 420-10 General Provisions, Organization, Functions, and Personnel.
AR 750-20 Prevention, Control, and Abatement of Pollution from Mobile Equipment.

Subpart E—Solid Waste Management

GENERAL

§ 650.105 Purpose.

This chapter defines Department of the Army policy, assigns responsibilities, and establishes procedures for the management of waste and resource recovery and recycling programs under the provisions of the National Environmental Policy Act of 1969 (NEPA), the Solid Waste Disposal Act, as amended (Resource Conservation and Recovery Act of 1976) and DOD Directive 4165.60.

§ 650.106 Goal.

Procure and use Army material resources in a manner that will minimize waste production and conserve natural resources. Reuse or recycling and reprocessing will be accomplished to the maximum extent practicable.

§ 650.107 Objective.

Specific objectives of the Army Solid Waste Management Program include:

(a) Design and procure materiel of such configuration that the end item or its components can be economically restored, reconstituted, or converted to other uses, when the end item and its packaging are no longer suitable for their original purposes.

(b) Dispose of unserviceable or excess materiel through property disposal channels or by some other means that would enable these resources to be recovered and reintroduces into the manufacturing process or reclaimed for other purposes, including use as an energy source.

(c) Dispose of wastes not capable of being economically recycled or otherwise reclaimed, in a manner that will avoid or minimize pollution of the environment.

§ 650.108 Policy.

(a) Solid and other waste materials will be recovered and recycled to the maximum extent practicable.

(b) The quantities of solid and other waste materials will be reduced at the source wherever possible (e.g., through the use of minimum packaging, the increased use of returnable or reuseable containers, source separation for recycling, and other such reducing measures).

(c) The use of joint or regional resource recovery facilities, is encouraged when it will be advantageous to the Army.

(d) Optional recycling programs are those which are managed and operated by the Managing Activity (para 1-3f, AR 420-47) but are not required by AR 420-47. These programs are encouraged, and may either complement an installation operated program or be the sole recycling activity, provided that: (1) Such actions will not conflict with the mandatory aspects of Source Separation and Recovery Programs required by AR 420-47, (2) the end result is to further the recycling of trash and waste materials, and (3) the annual cost to the Government is not greater than that of the normal solid waste disposal system.

(e) Contracts for solid and other waste materials disposal services shall include provisions for recycling, whenever practicable.

(f) Design, procurement, and use of materials will be accomplished in such a manner that it minimizes the generation of waste to the greatest extent feasible.

(g) All appropriate DA installations and activities will cooperate to the extent practicable in beneficial civilian community-conducted recycling programs.

(h) Ultimate disposal of solid waste by landfill or incineration will be done in accordance with chapter 3, AR 420-47.

(i) All actions which implement the requirements of this regulation and which could be controversial will be assessed to determine if an Environmental Impact Statement is required, in accordance with Subpart B of this part.

§ 650.109 Responsibilities.

(a) The Chief of Engineers will exercise primary Army staff responsibility for directing the Army Solid Waste Management Program and will:

(1) Promulgate policies and regulations on waste reduction, waste management, resource recovery, and recycling programs and waste disposal.

(2) Formulate, justify, and monitor Army programs and budgets pertaining to recycling programs.

(3) Monitor the solid waste management program and initiate reports as may be required.

(4) Maintain liaison with Office of the Assistant Secretary of Defense (Installations and Logistics), the Environmental Protection Agency and other Federal and private agencies who influence the waste management program.

(5) Coordinate with The Surgeon General on health aspects of solid waste management.

(b) The Deputy Chief of Staff for Operations and Plans will: (1) Ensure that the appropriate requirements documents include provisions for materiel reclamation, resource recovery, recycling and waste management throughout the life cycle of equipment, and

(2) Authorize specialized waste handling personnel on the table of distribution and allowances (TDA) of installations.

(c) The Deputy Chief of Staff for Research, Development and Acquisition will ensure the Research, Development, Test and Evaluation (RDT&E) program and the Army Procurement Accounting and Reporting System (APARS) major item program gives proper emphasis to waste reduction, equipment maintainability, and resource recovery/recycling.

(d) The Deputy Chief of Staff for Logistics will ensure that the Army logistical system places special emphasis on the reduction of waste, on maintainability, and on recycling, and that appropriate TDA allowances for specialized equipment are made.

(e) The Surgeon General will:

(1) Monitor the health and welfare aspects of the waste management program, and accumulate, evaluate and disseminate data on program practices that may adversely affect the health and welfare of personnel and animals.

(2) Provide technical guidance to other headquarters, DA staff offices and appropriate commanders on health aspects involved in Solid Waste Management.

(3) Perform solid waste surveys at DA installations.

(f) Command and Installation responsibilities are as outlined in AR 420-47.

STANDARDS AND PROCEDURES

§ 650.110 Standards.

Installations and activities, in their waste disposal operations as well as in their resource recovery and recycling programs, will meet environmental pollution standards promulgated by duly authorized Federal, State, interstate, and local agencies. In addition they will conform to the following waste management standards:

(a) Sufficient resources will be provided for the effective management of all wastes generated. Those wastes that cannot be recovered or recycled shall be disposed of in the most cost effective manner consistent with Army waste disposal requirements (AR 420-47).

(b) The installation commander may permit open burning when such burning does not conflict with local or State regulatory requirements, is accomplished during daylight hours, and is controlled to keep pollution of the air to a minimum.

(c) Wastes generated by any Army installation or activity will not be disposed of by open dumping. If suitable sites for sanitary landfill operations are not available on an installation, or municipal or private facilities for disposal are not available or are not cost effective, solid waste processing may be accomplished using incinerators especially designed for that purpose. Incinerators will be designed and operated to meet all applicable air pollution control requirements (chap. 3, AR 420-47).

(d) When contracting for off-post disposal of solid wastes from Army facilities by municipal or private facilities, the contractor must comply with Federal, State, and local guidelines.

§ 650.111 Procedures.

(a) Operation of solid Waste Collection and Disposal Systems (including Source Separation and Resource Recovery) will be accordance with AR 420-47.

(b) "Army installations will comply with all Federal, State, interstate, and local requirements, both substantive and procedural, including permits and reporting (Pub. L. 94-580)." Resource Recovery facilities established in accordance with AR 420-47 will be compatible with State and local plans.

(c) Management of Army solid waste programs at the installation level will generally be accomplished by the element which is already functionally responsible for refuse collection and disposal. Recyclable/marketable materials will be referred to the Defense Property Disposal Service (DPDS) for sale.

(d) Duplication of effort will be avoided in the collecting, sorting and transporting of recoverable waste by combining new and existing efforts. Military Exchanges and Commissary Stores, which purchase or lease processing equipment, may salvage and dispose of their recoverable resources.

§ 650.112 Reports.

(a) Sources of solid waste will be identified, and those requiring remedial action will be reported as specified in Subpart J. An example of an exhibit prepared on a typical solid waste facility found not to be in compliance with specified standards is at figure 10-5, (RCS DD-I&L(SA) 1383).

(b) The Managing Activity of a recycling program will complete an Annual Report of Solid Waste Source Separation and Resource Recovery/Recycling Operations in accordance with AR 420-47, (RCS DD-I&L(A) 1436).

§ 650.113 References.

Table 5-1 is a list of publications related to solid waste management.

TABLE 5-1—RELATED PUBLICATIONS

The National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 432 et seq.

Solid Waste Disposal Act, as amended, 42 U.S.C. 3251 et seq. (Resource Conservation and Recovery Act of 1976, Pub. L. 94-580).

Pub. L. 93-552, Military Construction Authorization Act, FY 1975.

Executive Order 11752, Prevention, Control and Abatement of Environmental Pollution at Federal Facilities, 38 FR 34793, December 19, 1973.

Department of Defense Directive 5126.15, Delegation of Authority with Respect to Facilities and Equipment for Metal Scrap Baling or Shearing, or for Melting or Sweating Aluminum Scrap.

Department of Defense Directive 4165.60, Solid Waste Management—Collection, Disposal, Resource Recovery, and Recycling Program.

DoD Manual 4160.21M, Defense Disposal Manual, June 1973, authorized by DoD Directive 4160.21, Department of Defense Personal Property Disposal Program.

AR 11-28, Economic Analysis and Program Evaluation for Resource Management.

AR 37-108, General Accounting and Reporting for Finance and Accounting Offices.

AR 37-120, Procurement of Equipment and Missiles, Army Management of the PEMA Appropriations, Policies and Procedures.

AR 40-5, Medical Service, Health and Environment.

Ar 235-5, Management of Resource, Commercial and Industrial Type Functions.

AR 415-15, MCA Program Development.

AR 420-47, Facilities Engineering, Solid Waste Management.

AR 750-36, Maintenance of Supplies and Equipment, Rebuild and Retread of Pneumatic Tires.

TM 5-634, Refuse Collection and Disposal; Repairs and Utilities.

TM 5-814-5, Sanitary Engineering—Sanitary Landfills.

Environmental Protection Agency Guidelines for Thermal Processing of Solid Wastes and for the Land Disposal of Solid Wastes (40 CFR Parts 240 and 241).

Environmental Protection Agency Guidelines for Solid Waste Storage and Collection (40 CFR Part 243).

Environmental Protection Agency Guidelines for Resource Recovery Facilities (40 CFR Part 245).

Environmental Protection Agency Guidelines for Source Separation for Materials Recovery (40 CFR Part 246).

Subpart F—Hazardous and Toxic Materials Management

GENERAL

§ 650.121 Purpose.

The provisions contained in this chapter implement the requirements of the Atomic Energy Act, as amended; the Energy Reorganization Act of 1974 and the Clean Air Act, as amended; the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended by the Federal Environmental Pesticide Control Act (FEPCA) of 1972; the Federal Water Pollution Control Act (FWPCA), as amended; the Marine Protection, Research and Sanctuaries Act of 1973 (MPRSA)—Ocean Dumping; the Solid Waste Disposal Act (SWDA), as amended and the Toxic Substances Control Act of 1976. Detailed guidance on oil and hazardous liquid substances spill prevention and contingency plans appears in Subpart I of this part.

§ 650.122 Goal and objectives.

The Department of the Army (DA) goal is to control hazardous and toxic materials to minimize hazards to health and damage to the environment. The following objectives are necessary to achieve this goal:

(a) All material developed and procured by the Army is to be designed to minimize health and environmental hazards during research, development, testing, production, use, storage, and disposal.

(b) Limit, to the extent practicable, the use of toxic and/or hazardous materials, and employ procedures which provide maximum safety during storage, use, and disposal when less toxic or hazardous substitutes are not available.

(c) Develop safe and environmentally acceptable methods for the storage and disposal of materials which are inherently hazardous or potentially dangerous due to the quantities involved.

(d) Provide properly trained personnel for the management, use, storage, and disposal of hazardous and toxic materials.

§ 650.123 Explanation of terms.

(a) *Certification.* The recognition by a certifying agency that a person is competent and thus authorized to use and supervise the use of restricted use pesticides.

(b) *Certified applicator.* Any individual who is certified to use or supervise the use of any restricted use pesticide covered by his certification.

(c) *Class 1 disposal site.* The location (e.g., sanitary landfill) where any final deposition of hazardous or toxic waste, after proper processing, may occur. Such a facility complies with EPA guidelines for the disposal of solid wastes as prescribed in 40 CFR Part 241.

(d) *Disposal.* To abandon, deposit, inter or otherwise discard waste as a final action after its use has been achieved, a use is no longer intended, or its use has been declared excess, suspended or cancelled.

(e) *Effluent standard.* A State or Federal effluent standard or limitation to which a discharge is subject under the FWPCA amendments of 1972, including, but not limited to, effluent limitations, standards of performance, toxic effluent standards and prohibitions, and pretreatment standards. This includes a prohibition of any discharge established, for any toxic pollutant described in 307(a) of the FWPCA as amended.

(f) *General use pesticide.* Pesticide for general public use not EPA Restricted Use Pesticide listing.

(g) *Hazardous and toxic material management.* For environmental purposes, the systematic and purposeful control over the production, procurement, storage, handling, use, and disposal of materials or substances which are either hazardous to life because of their inherent toxicity or a potential danger because of the quantities involved.

(h) *Hazardous substance.* An element or compound or mixture (other than oil as covered in Subpart I of this part) which, when discharged in any quantity into or upon the navigable or coastal waters, presents an imminent and substantial danger to the public health or welfare, including fish, shellfish, wildlife, shoreline, and beaches, e.g., hazardous substances include some strong acids, strong bases, organic solvents, certain metals and their compounds, other strong oxidizers, or other bulk-stored chemicals used in manufacturing processes and maintenance or repair operations. (Designation of and determination of removability of hazardous substances will be addressed in 40 CFR Part 116).

(i) *Hazardous waste.* Any waste or combination of wastes which, if not effectively controlled, poses a potential hazard to human health or living organisms because they are nondegradable, persistent in nature, lethal, or may otherwise cause or tend to cause detrimental cumulative effects. Such materials include wastes which are corrosive, flammable, toxic, irritants, strong sensitizers or which generate pressure through decomposition, heat or other means.

(j) *Ocean dumping.* The disposal of hazardous or toxic materials (including pesticides, pesticide containers, pesticide-related wastes, other hazardous chemical stocks, pharmaceutical stocks of drugs, radioactive materials, explosive ordnance or chemical warfare agents) in or on the oceans and seas as defined in the MPRSA (Pub. L. 92-532).

(k) *Open burning.* The disposal by burning of hazardous or toxic materials or their wastes in any fashion other than by incineration in an approved hazardous waste incinerator.

(l) *Open dumping.* The placing of hazardous or toxic materials or their wastes in a land site in a manner which does not protect the environment and is exposed to the elements, vectors, and scavengers.

(m) *Pest.* Includes, but is not limited to, any insect, rodent, nematode, fungus, weed, or any form of plant or animal life or virus, bacterial organism or other micro-organism (except viruses, bacteria, or other micro-organisms on or in living man or other animals) which is normally considered to be a pest or which the Army may declare to be a pest in accordance with public law or national policy.

(n) *Pest management.* Pest control in which one or more control methods are selected for use in an integrated program that incorporates a series of alternative control strategies including parasites, predators, pathogens, cultural practices and chemicals, to achieve economic pest control with least disruption of the environment.

(o) *Pesticide.* Any substance or mixture of substances intended for preventing, destroying, repelling, attracting, or mitigating any pest and any substances or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

(p) *Pesticide-related wastes.* All pesticide-containing wastes or pesticide-containing by-products which are to be discarded, but which, pursuant to acceptable pesticide manufacturing or processing operations, are not ordinarily a part of or contained within an industrial waste stream discharged into a sewer or the waters of a State.

(q) *Processing.* To neutralize, detoxify, incinerate, biodegrade, or otherwise treat a hazardous or toxic waste to remove its harmful properties or characteristics for disposal.

(r) *Restricted use pesticide.* A pesticide that is classified for restricted use under the provisions of section 3(d)(1)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 135 et seq.) and other legislation supplementary thereto and amendatory itself.

(s) *Soil injection.* The emplacement of hazardous or toxic materials or their wastes by ordinary tillage practices within the plow layer of a soil.

(t) *Toxicity.* The property of a substance or mixture of substances to cause any adverse physiological effects on any of the biological mechanisms of an organism.

(u) *Toxic pollutant.* Pollutants or combinations of substances (including disease-causing agents) which, after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism—either directly from the environment or indirectly by ingestion through food chains—will cause death, disease, behaviorial abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction) or physical deformations in such organisms or their offspring. (A list of toxic pollutants will be given in 40 CFR Part 129).

(v) *Waste.* Any material for which no use or re-use is intended and which is to be discarded.

(w) *Water dumping.* The disposal of hazardous or toxic materials or their wastes in or on lakes, ponds, rivers, sewers, or other water systems as defined in the FWPCA (33 U.S.C. 1251 et seq.)

§ 650.124 Policies.

The Department of the Army will—

(a) Exercise positive management over the research, development, procurement, production, use, handling, storage and disposal of hazardous and toxic material. Priority will be given to instituting measures required to protect health or control pollution.

(b) Comply with environmental quality policies and procedures specified in this regulation and those standards established by the applicable Federal, State, interstate, or local authority for the control of hazardous and toxic materials and substances.

(c) Use nonhazardous or nontoxic materials to the extent practicable.

(d) Conserve resources and, to the extent practicable, dispose of hazardous and toxic materials and waste by reprocessing, recycling, and/or reusing.

(e) Program and budget sufficient resources for the effective management and environmental control of pesticides, hazardous chemical stocks, pharmaceuticals, radioactive materials, explosives, and chemical agents in accordance with DA regulations and in consonance with any other applicable Federal, State, or local objectives.

(f) Conform with Federal regulations and guidelines respecting pesticides, promulgated pursuant to the provisions of FIFRA as amended, (§§ 650.126 through 650.129).

(g) Acquire and use only those pesticides registered with the Environmental Protection Agency (EPA) (§ 650.126(a)).

(h) Monitor for the residual effects of pesticides on military installations in furtherance of the National Pesticide Monitoring Program.

(i) Conform with applicable Federal regulations, standards, and guidelines promulgated and adopted in accordance with the Atomic Energy Act, as amended (42 U.S.C. 2011), Energy Reorganization Act of 1974, or by EPA on discharges of radioactivity. This restriction does not apply to emergency operations conducted by Explosive Ordnance Disposal or Technical Escort personnel (§§ 650.139, 650.140 and 650.141).

(j) Prohibit the disposal (by open dumping, water dumping, well injection, or open burning) of pesticides, hazardous chemical stocks, pharmaceutical stocks and drugs, radioactive materials, explosive ordnance, or chemical warfare agents directly into the air, water, or land environment in a manner hazardous to man or animals or if it will cause unreasonable adverse effects on the environment (§ 650.127(f)).

(k) Conform with Federal regulations and guidelines respecting dumping of material into ocean waters in accordance with the MPRSA and the FWPCA as amended.

(l) In the absence of published national standards, guidance on acceptable methods and maximum concentrations pertaining to the use, storage, discharge or disposal of hazardous and toxic substances are to be referred through Major command headquarters to the USA Health Services Command.

(m) Comply fully with the DOD Pest Management program.

§ 650.125 Responsibilities.

(a) Department of the Army Staff.

(1) The Inspector General and Auditor General will—(i) Exercise primary Army Staff responsibility for overall supervision of Army safety program activities as established by AR 385-10.

(ii) Provide assistance and guidance on the safety aspects of the storage, use, handling, and disposal of hazardous and toxic substances.

(2) The Deputy Chief of Staff for Operations and Plans will—(i) Ensure that Required Operational Capability (ROC) documentation for new material involving potentially hazardous materials requires that safe and environmentally acceptable methods for storage and disposal of these materials be developed or included as part of procurement specifications.

(ii) Provide single DA contact point for all chemical warfare activities including demilitarization and disposal.

(3) The Deputy Chief of Staff for Research, Development and Acquisition will ensure that all materiel developed by the Army is designed to minimize health and environmental hazards during research and development, production, testing, storage, use and disposal.

(4) The Chief of Engineers will—(i) Exercise primary Army Staff responsibility for coordinating guidance and promulgating environmental protection regulations concerning hazardous and toxic material management within the Army.

(ii) Provide technical instructions and guidance on the implementation of pest management programs.

(iii) Coordinate with The Surgeon General to establish Army criteria, instructions, and corrective measures involving pollution from hazardous and toxic materials.

(iv) Promote the reclamation, recycling, or safe disposal of excess and outdated chemicals, particularly the stocks of cancelled or excess pesticides and superseded chemicals.

(5) The Surgeon General will—(i) Establish health criteria and standards and monitor health and welfare aspects of the hazardous and toxic material management program.

(ii) Develop environmental toxicology data and recommend standards for safe storage, use, discharge and disposal of hazardous and toxic materials.

(iii) Provide technical instructions and guidance for the DA pest management programs in disease vector control, pesticide monitoring, health, safety, and the training of pesticide applicators.

(iv) Coordinate with the Chief of Engineers in establishing criteria, instructions, and corrective measures involving pollution from hazardous and toxic materials.

(6) The Judge Advocate General will provide guidance, as required, on interpretation of FIFRA, FEPCA, FWPCA, MPRSA, SWMA and other Federal, State, and local laws and regulations.

(b) Commanding General, US Army Materiel Development and Readiness Command (DARCOM) will—

(1) Establish training programs for logistical personnel involved in the production, testing, and storage of explosives and chemical munitions and for those handling radioactive materials, hazardous and toxic chemicals, and products.

(2) Conduct research and technological investigations in support of the hazardous and toxic materials pollution abatement efforts related to industrial facilities operated by DARCOM. This includes development of alternative less polluting industrial processes, development of industrial waste recycling systems, evolvement of treatment processes and design criteria, and development of safe and profitable disposal methods.

(3) Ensure compliance with DA and other Federal regulations on the disposal of chemical agents and munitions (§§ 650.130—650.134 and §§ 650.139—650.141).

(4) Procure materials for Army use which will minimize health and environmental hazards during production, use, storage, and disposal.

(c) Commanding General, US Army Health Services Command will—

(1) Conduct training activities to ensure proficiency in the application, handling, storage, use, and disposal of pesticides to qualify pest control personnel for certification in accordance with the FIFRA 1972, as amended, and EPA guidelines.

(2) Provide personnel for conducting field investigations and special studies concerning hazardous and toxic materials and for recommending measures required to protect health and welfare and to comply with standards.

(3) Conduct the DA pesticide monitoring program in accordance with AR 40-5 to complement the National Pesticide Monitoring Program.

(d) Major Army commanders will—

(1) Establish a program for the control of hazardous and toxic materials management for the protection of the health and welfare of personnel and the natural environments.

(2) Program and budget for necessary resources required for hazardous and toxic materials management and pest management programs.

(3) Certify and recertify as necessary, personnel employed in pest control activities after determination that personnel have received adequate training from an authorized and qualified source and have demonstrated proficiency in the application, handling, storage, use and disposal of pesticides in accordance with FIFRA, as amended. Such certification should identify the specific areas in which personnel are fully qualified.

(e) Installation and activity commanders will—

(1) Supervise the procurement, use, storage, and disposal of hazardous and toxic materials and chemicals and initiate appropriate procedures to protect the health and welfare of personnel who are exposed to their use.

(2) Comply with the procedures on the handling, use, and storage of hazardous and toxic materials which are under development and will be published by the Department of the Army. In the absence of DA regulations, Army activities will cooperate with Federal, State, or local agencies in meeting their standards.

(3) Use nonhazardous and nontoxic materials in installation and activity operations and procedures, when practicable.

(4) Ensure that at least two personnel at each installation involved in the pest management programs and on application of pesticides are certified in accordance with EPA and DOD Directives, and AR 420-74 and AR 420-76 procedures.

(5) Maintain liaison and cooperate with representatives of Federal, State, and local authorities engaged in regional pest control operations and pollution control and abatement.

(6) Dispose of hazardous and toxic materials in accordance with EPA-approved and DA-approved procedures (§§ 650.126—650.138). Chemical warfare agents will be disposed of in accordance with detailed plans approved by DOD (§§ 650.138—650.141).

(7) Ensure that waste effluent discharges from radioactive isotope activities are in accordance with applicable rules, regulations, and requirements of the Nuclear Regulatory Commission (10 CFR Part 20) and the policies and guidance of the Environmental Protection Agency as published in Title 10 CFR.

(8) Program and budget for resources necessary to conduct an effective hazardous and toxic materials management program at each Army installation.

(9) Conduct an annual review and inspection of pest control shop to insure that a sound pest management program is established and followed, and that prescribed procedures in the handling, use and disposal of pesticides and pesticide containers are being followed.

(10) Promote a positive integrated pest management program to minimize the excessive use of unneeded chemical pesticides.

PESTICIDE MANAGEMENT PROGRAM

§ 650.126 Implementing guidelines.

(a) DA will procure and use only those pesticides approved by and pursuant to FIFRA. Use of a pesticide other than those registered and approved for specific application in accordance with their labeling is illegal under FIFRA.

(b) Some pesticides are on the EPA list of toxic pollutants for which water effluent standards are being developed. The list includes, but is not limited to substances such as aldrin, dieldrin, cadmium and all cadmium compounds, cyanide and all cyanide compounds, DDD (TDE), DDE, DDT, endrin, mercury and all mercury compounds, toxaphene (chlorinated camphene) mirex, chlordane, heptachlor, and Kepone. If the registration of any pesticides has been suspended or finally cancelled by EPA, DA organizations will only use such pesticides in accordance with the EPA suspension or cancellation orders. MACOM professional pest management personnel, DAEN-FEB and DAEN-ZCE will be contacted for suspended or cancelled pesticide information.

(c) The concentration of pesticide residue contained in waste water discharges should not exceed the levels specified by the National Pollutant Discharge Elimination System (NPDES) permit issued to an installation.

(d) The storage, use, handling, and disposal of pesticides will conform to safety and health standards established by HQDA based on regulations published in the FEDERAL REGISTER and Code of Federal Regulations by EPA, HEW, DOT and other appropriate Federal agencies. Army publications that apply to the conduct of pest control activities are given in table 6-1. Disposal and repackaging guidelines are given in tables 6-3 and 6-4 of this subpart.

§ 650.127 Procedures.

(a) The following requirements are applicable to pesticides in the two EPA rating system classes, highly toxic and moderately toxic (Toxicity categories I and II respectively) 39 FR 15237. Pesticides and used pesticide containers will be stored in a secure, dry, ventilated, single purpose, fire resistive room, building, or covered area. Pesticide formulations will be stored separately, inventoried semiannually and identified with warning signs in accordance with the EPA toxicity rating and Department of Transportation warning systems for pesticide labeling, and checked bimonthly for corrosion and leaks (39 FR 15235-15241). Large quantities of excess pesticides and used pesticide containers awaiting disposal will be stored in a secure and separate area and will be checked bimonthly for corrosion and leaks. Where applicable, the outside of each storage area will be labeled with appropriate "DANGER," "POISON," "PESTICIDE STORAGE" signs and local fire department hazard signal signs.

(1) Emergency detoxification and decontamination equipment, sink and showers, eye lavage, protective clothing, and rubber gloves will be provided pesticide handlers in accordance with AR 420-74, AR 420-76, and AR 385-32.

(2) A viable accident prevention and environmental protection program will be maintained within the installation pest control service areas. Signs will be posted within the pesticide storage area indicating the type and common name of the pesticides being stored.

(3) A complete inventory of pesticides on hand will be maintained by the pesticide control services personnel indicating the number and identity of containers stored.

(b) Pesticide application and other insect and rodent control will be accomplished by or under the direct and continuing supervision of a trained and certified applicator (AR 420-74 and AR420-76). SOP's will be prepared by installation pesticide users on the application of pesticides. These SOPs will be reviewed by the appropriate MACOM engineer and/or medical entomologist, or agronomist (for herbicide application). MACOM's may delegate authority to installation level when adequate professional capability exists at this installation.

(c) DA directives will give a categorization for pesticide use. Categorization listings will identify those pesticides which may be used by a trained and certified applicator as well as by other than a trained and certified applicator.

(d) EPA pesticides registered under FIFRA will be used by the pesticide control services personnel, and usage will be in accordance with DA directives and label requirements. In the event it is desired to use special use or State registered pesticides, approval will be obtained from the MACOM entomologist/agronomist, DAEN-FEB and DAEN-ZCE.

(e) Pesticides in excess of installation requirements will be reported through channels to the Commander, U.S. Army General Parts and Materiel and Petroleum Activity Center, New Cumberland Army Depot, New Cumberland, Pa. 17070, in accordance with paragraph 77, Chapter VI, Defense Disposal Manual 4160.21M. Disposition instructions will be requested. However, every effort should be made to use the pesticide for the purposes originally intended, at the prescribed dosage rates, provided they are currently legal under all Federal, State, and local laws and regulations.

(f) Only approved methods will be used in the disposal of small quantities of certain excess or unusable pesticides (39 FR 15239). Accepted methods of rinse and disposal of pesticide containers have been developed in accordance with EPA recommended procedures. Guidance thereon will be issued by DAEN-ZCE. Technical assistance concerning containers not covered in directives may be obtained from: Commander, U.S. Army Environmental Hygiene Agency (USAEHA), Aberdeen Proving Ground, Md. 21010. Small quantities of used, suspended or cancelled pesticides may be disposed of in a Class 1 disposal site or its equivalent. These "small" quantities vary with different pesticides and will be determined by Commander, USAEHA.

(g) The judicious application of herbicides will be observed in natural resources management operations. Alternative methods of plant control such as mowing, controlled burning, etc. should be employed if economically feasible rather than the use of herbicides if at all possible.

(h) Prohibited procedures.

(1) No pesticide, pesticide-related waste, pesticide container, or residues from a pesticide container will be disposed of in such a manner as to cause or allow: open dumping; water dumping; well injection; direct exposure which may result in contamination of food or feed supplies, or a manner in-

consistent with its label or labeling. Rare exceptions to these prohibited procedures may be granted by the regional administrator of EPA in accordance with the MPRSA and FWPCA amendments of 1972.

(2) Normally, no pesticide, pesticide-related waste, pesticide container, or residue from a pesticide container shall be disposed of in such a manner inconsistent with its label or labeling or in such a manner as to cause or allow open burning. Small quantities of combustible containers, not to exceed 50 pounds or the quantity emptied in a single work day, whichever is less (except those formerly containing organic beryllium, selenium, mercury, lead, cadmium, or arsenic compounds) may be burned by the applicator in open fields where—

(i) Due regard is given to wind direction in relation to receptors such as population centers, field workers, domestic animals, and surface water supplies,

(ii) Such open burning is consistent with Federal, State, or local ordinances; and

(iii) Provisions are made to avoid contamination of surface and groundwater to levels in excess of standards promulgated by the Public Health Service, U.S. Department of Health, Education, and Welfare for potable water.

(i) Immediate emergency assistance on a pesticide spill that threatens life or gross contamination of the environment may be obtained by calling (800) 424-9300 or in Wash., D.C. (202) 483-7616 (Chap. 6, AR 420-76).

(j) Application of pesticides, including aerial dispersal, may require the filing of an Environmental Impact Statement (EIS). The continuation of ongoing pest control operations which have been assessed and found to have no significant adverse environmental effect may not require the preparation of an EIS. However, a change of pesticide, rate of application, application technique or the initiation of a special or new operation, will require preparation of a new Environmental Impact Assessment (EIA) or the updating of a previous assessment. Where new pesticide programs are proposed, the command entomologist or agronomist will be consulted. Copies of each EIA prepared will be retained on file at the installation. (See Subpart B of this part for EIA/EIS procedures).

§ 650.128 Monitoring.

(a) The DA pesticide monitoring program is the responsibility of the US Army Health Services Command (AR 40-5). It complements the National Pesticide Monitoring Program to insure that the use of pesticides does not constitute a threat to human health or hazard to the environment. The program determines pesticide residue levels in substances such as surface water, soil, sediments, fish, and birds.

(b) Army installation commanders having pest control management activities will support the DA pesticide monitoring program. Technical assistance in this area may be obtained from Commander, US Army Environmental Hygiene Agency, Aberdeen Proving Ground, Md. 21010.

§ 650.129 Reports (RCS DD-I&L (AR) 1080) and (RCS DD-I&L (SA) 1383).

(a) *Pest Control Summary Report, (RCS, DD-I&L (AR) 1080).* Continuing reports will be made on the use of pesticides as required by AR 420-76.

(b) *The Environmental Protection Control Report—Pesticide Pollution Category 6, (RCS DD-I&L (SA) 1383).* The Pesticide Pollution Control Report is designed to provide information on a phased and co-ordinated plan for prevention or control of pesticide pollution for submission to Office of the Secretary of Defense and Office of Management and Budget. Examples to be included in such a report are disposal facilities, storage facilities or shop remodeling relating to prevention, control or abatement of pollution from pesticides. The report is the Army's fiscal plan for abatement of pesticide pollution resulting from Army activities. See Subpart J of this part for reporting procedures and guidance.

HAZARDOUS CHEMICAL STOCKS (EXCLUDING CHEMICAL WARFARE AGENTS)

§ 650.130 Implementing guidelines.

(a) Existing or promulgated hazardous chemical management standards in this regulation apply to all Army facilities. Storage, use, handling and disposal of hazardous chemical stocks will conform to published DA policies, standards, and procedures (tables 6-1 and 6-2).

TABLE 6-1.—PEST CONTROL PUBLICATIONS

Publication	Title	Pest control application
Ch. 5, AR 40-5	Health and Environment	Health aspects of medical entomology and pesticides.
AR 40-574	Aerial Dispersal of Pesticides and Utilities; Operation and Maintenance.	Policies and procedures for aerial dispersal of pesticides.
AR 385-32	Protective Clothing and Equipment	Responsibilities, policy and procedures for providing protective clothing and equipment.
AR 420-74	Natural Resources—Land, Forest, and Wildlife Management.	Special training for herbicide handlers.
AR 420-76	Pest Control Services	Prevention of environmental pollution by pesticides; policy on use of persistent pesticides; guidance on pesticide disposal; procedure and format for submission of the pest control summary report.
TM 5-629	Herbicide Manual for Noncropland Weeds	Herbicides for noncropland weeds.
TM 5-630	Ground Maintenance and Land Management	Safety precautions in using herbicides.
TM 5-632	Military Entomology Operational Handbook	Guidance and techniques on dispersal and use of pesticide.

(b) With the exception of oils and other liquid petroleum products (Subpart I of this part), it is difficult to identify materials which should be classified as hazardous or toxic. Hazards to be considered include flammability, radioactivity, reactivity, toxicity, bioconcentration, irritation, allergenic, or genetic activity. Certain chemicals, such as asbestos, cadmium, lead, mercury, beryllium, cyanide, toxaphene, polyvinyl chloride, polychlorinated biphenyls (PCB's), fluorine compounds, selenium, arsenic, and certain pesticides are recognized as hazardous and special storage and handling are necessary even for small quantities. Other materials, however, are more difficult to categorize since excessive amounts of almost anything can be harmful when released. EPA is currently defining criteria and establishing effluent standards for hazardous substances and toxic pollutants (including some pesticides) under the Federal Water Pollution Control Act amendments of 1972 (39 FR 30466). Effluent standards will be published by EPA for these hazardous substances which can reasonably be anticipated to be discharged into navigable waters and which will pose an imminent and substantial danger to public health and welfare. Upon issuance in the FEDERAL REGISTER, DA installation commanders will follow required restrictions and guidelines on their discharge or disposal.

(c) Subpart C of this part lists requirements under the National Pollutant Discharge Elimination System and other applicable Federal, State, and local standards.

(d) Ocean dumping, as a rule, will not be considered an acceptable means of disposing of hazardous and toxic substances, pesticides, radioactive wastes, or chemical warfare agents. Only under special circumstances, and after coordination with EPA, will ocean dumping and transportation for such dumping be allowed.

§ 650.131 Procedures.

The hazardous chemical management procedures in this regulation are presented as preferred methods by which the requirements of the environmental standards and the objectives of DA policies can be achieved. If techniques other than the following are used, commanders will demonstrate in advance that the techniques to be employed will satisfy the environmental quality standard in this regulation or those established by the appropriate Federal, State, or local authority.

(a) All measures to prevent accidental pollution of the environment by uncontrolled release of hazardous chemicals to the air, water, or land environment will be taken by all Army activities.

(1) Installations storing, handling, or transferring hazardous chemicals will include within their Spill Prevention Control and Countermeasure (SPCC) Plan, procedures to prevent, control and report accidental releases of these substances to the environment. (See Subpart I of this part, on requirements for SPCC plans).

(2) Effluent standards for toxic pollutants are found in 40 CFR Part 129, and the designation of hazardous substances will be found in 40 CFR Part 116.

(b) Storage facilities for chemicals (excluding pesticides) hazardous to health and welfare and detrimental to the environment, will be located according to the nature of the chemicals, storage site, protective enclosures, and operating procedures. Adequate measures will be taken for inventorying chemicals semiannually, for controlling hazards, and for monitoring the environment.

(c) Appropriate safety materials and protective clothing and equipment will be kept on hand for emergency treatment, decontamination, cleanup, and for area warning signs and labels.

(d) No hazardous chemical, or its container, which will cause adverse effects on the environment, will be used or disposed of in a manner inconsistent with instructions on its label or inconsistent with use or disposal procedures established by Federal, State, or local laws or regulations.

(e) Ultimate disposal of unserviceable and excess hazardous chemical stocks.

(1) Hazardous chemical stocks that are unserviceable and/or have been declared excess to DA requirements will be reported to the local Defense Property Disposal Office (DPDO) for merchandising. The stocks will remain the property of the generating agency until ultimate disposal.

(2) Disposal of hazardous chemical stocks on which DPDO disposition cannot be obtained may be made by contract with commercial firms, provided it is in accordance with appropriate Federal, State, or local laws and regulations and the commercial firm is licensed or otherwise approved to dispose of the chemical stocks by the appropriate authorities.

(3) Disposal guidance can be obtained from the Commander, US Army Edgewood Arsenal who, in conjunction with Commander, US Army Environmental Hygiene Agency, Aberdeen Proving Ground, MD 21010, will provide data. Requests for disposal guidance should include Federal Stock Number (FSN), full nomenclature, appropriate military specification or standard indicated on label, quantity of issue, total quantity of issue, total quantity requiring disposal (pounds, gallons, liters, etc.), and condition of containers.

(4) Commanders of installations and activities who are responsible for disposing of hazardous chemicals will maintain records indicating quantities of hazardous chemicals disposed of, disposal method used, and disposal site location (e.g. removal of polychlorinated biphenyls (PCB) from transformers).

(f) The transport of dangerous or hazardous chemicals is subject to the provision of Pub. L. 91-121 (50 U.S.C. 1511-1516) and AR 55-56. Chapter 216, AR 55-355 requires DA compliance with CFR Title 14 (air transportation), Title 49 (highway and rail transportation), and Title 46 (water transportation). Further, AR 55-228 governs water transport of hazardous materials and TM 38-250 prescribes the provisions for the transportation of dangerous materials by military aircraft.

(g) Immediate short-term (30 minutes or less) emergency assistance on a chemical spill transportation problem may be obtained by calling Chem Trec (800) 424-9300 or in the Washington, D.C. area, (202) 483-7616. This service is available only for short-term transportation problems and provides information on spills, leaks, fire and explosion.

§ 650.132 Special authorizations.

(a) A notification must be made to EPA for the operation, construction or modification of a source of hazardous air pollutants (asbestos, beryllium, or mercury); FEDERAL REGISTER April 6, 1973 (38 FR 8820) and May 3, 1974 (39 FR 15396) and October 25, 1974 (39 FR 38064) and October 14, 1975 (40 FR 48292) (Exempt Report paragraph 7-2o AR 335-15). Sprayed asbestos materials will not be used in construction for any purpose and controls are placed on asbestos handling during demolition operations. When Federal, State, or local regulations establish other permit systems, DA directives will provide guidance and compliance schedules, as appropriate.

(b) Transportation of hazardous items is covered in AR 55-56, Title 49 CFR Parts 170-189 and Department of Transportation hazardous materials regulations.

(c) Installation commanders will comply with permits required under the provisions of the National Pollutant Discharge Elimination System (NPDES).

§ 650.133 Monitoring.

Environmental monitoring will be in accordance with requirements established in Subparts C and D of this part and the NPDES.

§ 650.134 Reports.

Installation commanders will report, as required, on the inventory, use, and disposal of hazardous chemical stocks, on recurring reports under the NPDES, and as required on accident/incident reports required by AR 385-40 and AR 50-6.

PHARMACEUTICAL STOCKS, BIOLOGICAL WASTES, AND DRUGS

§ 650.135 Procedures.

The pharmaceutical disposal procedures in this regulation are preferred methods and apply to both existing and new Army facilities.

(a) No pharmaceutical stock or its container will be disposed of in a manner inconsistent with instructions on its label; or instructions provided in DA #SB 8-75 series supply bulletins; or inconsistent with disposal procedures established by appropriate Federal, State, or local laws and regulations.

(b) Pharmaceutical stocks in excess to medical facility requirements will be reported through medical supply channels in accordance with AR 40-61 and disposition instructions will be requested.

(c) Destruction of banned, outdated, and unserviceable pharmaceutical stocks will be in accordance with instructions provided in DA #SB 8-75 series bulletins. Assistance in determining applicability of disposal procedures may be obtained by request to Commander, US Army Environmental Hygiene Agency, Aberdeen Proving Ground, MD 21010.

(d) Army installation commanders disposing of pharmaceutical stocks by land burial will maintain records on quantities disposed, disposal method used, and disposal site location.

(e) Biological, surgical and hospital-type hazardous or toxic waste materials will be used, handled, stored and disposed of in accordance with AR 40-5 and AR 40-61. Technical assistance on special problems in handling unusual, hazardous or toxic chemical and biological materials can be obtained by requests addressed to:

(1) CONUS—Commander, US Army Health Services Command, ATTN: HSC-PA-H, Fort Sam Houston, TX 78234.

(2) OVERSEAS (including Hawaii)—HQDA (DASG-HCH), WASH DC 20310.

§ 650.136 Special authorizations.

Policies and procedures for obtaining written approval applicable to investigative drugs in humans are outlined in AR 40-7.

§ 650.137 Monitoring.

Environmental monitoring will be in accordance with requirements established in Subparts C and D of this part under the NPDES.

§ 650.138 Reports.

Installation commanders will provide reports on disposition of pharmaceutical drugs as required.

RADIOACTIVE MATERIALS, EXPLOSIVES, AND CHEMICAL WARFARE AGENTS

§ 650.139 Radioactive materials and nuclear accidents and incidents.

(a) Policies and procedures applicable to nuclear accidents and incidents are given in AR 40-13, AR 50-5, AR 360-5, AR 385-40, and AR 755-15. The handling, use, and disposal of radioactive materials will be in accordance with applicable Army regulations and will be in such a manner so as not to contribute to pollution of the environment; within imminent safety and health considerations. Procedures may be found in Army guidance dealing with medical services, nuclear weapons and material, transportation and travel, explosives, safety, logistics, and disposal of supplies and equipment directives.

(b) The handling and control of radioactive material and other sources of ionizing radiation will be in accordance with AR 40-37 and AR 700-52. The temporary storage of radioactive materials, prior to shipment for transfer or disposal, will be in accordance with AR 40-5, AR 40-37, AR 700-52, AR 755-15, TM 3-261 and 10 CFR Part 20.

(c) The shipment and disposal of radioactive materials will be in accordance with AR 55-55, AR 755-15, and DOT and Nuclear Regulatory Commission regulations.

(d) For existing activities, the local disposal of radioactive materials by release to the sanitary sewerage systems and other radioactive effluents to the environment will be as low as readily achievable and in accordance with AR 755-15 and rules, regulations and the requirements of the Nuclear Regulatory Commission and the Environmental Protection Agency.

(e) Special problems on radioactive waste disposal will be referred through command channels to Commander, U.S. Army Materiel Development and Readiness Command (ATTN: AM CSF-P), 5001 Eisenhower Avenue, Alexandria, Va 22333.

(f) All nuclear reactor facilities will be monitored for discharges of gaseous, liquid or particulate effluents to prevent contamination of the environment in accordance with chapter 4, AR 385-80.

(g) Installation commanders will provide reports on handling, use, inventory or disposal of radioactive materials and monitoring as requested by DA, EPA, Nuclear Regulatory Commission or other Federal agencies, and on nuclear accidents/incidents as required by AR 385-40.

(h) The Environmental Protection Control Report—Radiation Pollution, Category 4, (RCS (DD-I&L(SA) 1383). The Radiation section of the semiannual Environmental Pollution Control report is designed to provide information to HQDA on phased or coordinated plans for prevention or control of radiation pollution for submission to Office of the Secretary of Defense and Office of Management and Budget. See Subpart J of this part for reporting procedures and guidance.

(i) All new activities and modification of existing facilities which involve the continuous release of radioactive materials in effluents to air, water or sanitary sewerage systems will not exceed 1 percent of the activity concentration as specified in National Council on Radiation Protection and Measurement Report No. 22 (National Bureau of Standards Handbook No. 69) and 10 CFR Part 20 when averaged over 1 month. Batch releases will be averaged over the actual time of release and will not exceed the levels/concentrations as stated above.

§ 650.140 Explosive ordnance.

(a) Policies and procedures applicable to explosive ordnance materials are contained in AR 75-1, AR 75-14, AR 75-15, AR 385-60, AR 385-64, and AR 755-15 series regulations dealing with disposal of supplies & equipment. The disposal of deteriorated ammunitions and explosives will be in accordance with Army regulations in the 75, 385 and 755 series. Every effort will be made to dispose of these wastes so as not to contribute to the pollution of the environment within personnel safety considerations for Explosive Ordnance Disposal and Technical Escort Emergency Operations.

(b) Deteriorated or unused explosives, munitions and rocket propellants may only be open-burned in nonurban areas and under conditions acceptable to Regional EPA and appropriate State Air Pollution Control authorities. Where there is an official prohibition against burning of such wastes, notification of restrictions and/or requests for assistance will be submitted through command channels to DAEN-ZCE.

(c) Installation commanders will provide reports to DA, as requested, on the handling, use, inventory or disposal of explosive materials and on explosive accidents/incidents as required in AR 385-40.

§ 650.141 Chemical warfare agents.

(a) The handling, use, and disposal of chemical warfare agents, ammunition, and explosive materials will be in accordance with Army regulations and will be in such a manner so as not to contribute to the pollution of the environment. Procedures may be found in Army directives dealing with transportation and travel, explosives, safety, and disposal of supplies and equipment. The safety program for chemical agents and associated weapon systems is prescribed in AR 385-61. Further, disposal of chemical warfare agents will be planned in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190 (42 U.S.C. 4321 et seq.), Military Appropriation Acts Pub. L. 91-121, section 409 and Pub. L. 91-441, section 506.

(b) Installation Commanders will provide reports through command channels to DA as requested on handling, use, inventory, or disposal of chemical warfare agents and as required on chemical accidents/incidents as outlined in AR 385-40. Disposal guidance can be obtained from the Commander, U.S. Army Edgewood Arsenal who, in conjunction with the Commander, U.S. Army Environmental Hygiene Agency, Aberdeen Proving Ground, Md. 21010, will provide data.

TABLE 6-2. RELATED PUBLICATIONS

Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) as amended by the Federal Environmental Pesticide Control Act of 1972, Pub. L. 92-516. (Title 7 U.S.C. 135-135K, 136-136Y (1972)).

Federal Water Pollution Control Act Amendments of 1972 (Title 33 U.S.C. 1151 et seq.).

Marine Protection, Research and Sanctuaries Act of 1972 (86 Stat. 1052).

Solid Waste Disposal Act as amended (Title 42 U.S.C. 3251 et seq.).

AR 40-5 Health and Environment.

AR 40-7 Use of Investigational Drugs in Humans and the Use of Schedule I Controlled Drug Substances.

AR 40-13 Radiological Emergency Medical Teams (REMT).

AR 40-37 Licensing and Control of Radioactive Materials for Medical Purposes.

AR 40-61 Medical Logistics Policies and Procedures.

AR 40-574 Real Property Dispersal of Pesticides.

AR 50-5 Nuclear Surety.

AR 50-6 Chemical Surety.

AR 55-55 Transportation of Radioactive and Fissile Material Other Than Weapons.

AR 55-56 Transportation of Dangerous or Hazardous Chemical Materials.

AR 55-228 Transportation by Water of Explosives and Hazardous Cargo.

AR 55-355 Military Traffic Management Regulation.

AR 75-1 Malfunctions Involving Ammunition and Explosives.

AR 75-14 Interservice Responsibilities for Explosive Ordnance Disposal.

AR 75-15 Responsibilities and Procedures for Explosive Ordnance Disposal.

AR 360-5 General Policies.

AR 360-43 Information Guidance—Nuclear Accidents and Nuclear Incidents.

AR 385-10 Army Safety Program.

AR 385-16 System Safety.

AR 385-30 Safety Color Code Markings and Signs.

AR 385-32 Protective Clothing and Equipment.

AR 385-40 Accident Reporting and Records.

AR 385-60 Coordination with Armed Services Explosives Safety Board.

AR 385-61 Safety Program for Chemical Agents and Associated Weapon Systems.

AR 385-64 Ammunition and Explosives Safety Standards.

AR 385-80 Nuclear Reactor Health and Safety Program.

AR 420-74 Natural Resources—Land, Forest, and Wildlife Management.

AR 420-76 Pest Control Services.

AR 420-77 Restrictions on Use of Herbicide 2,4,5-T.

AR 700-52 Licensing and Control of Sources of Ionizing Radiation.

AR 750-20 Prevention, Control, and Abatement of Pollution from Mobile Equipment.

AR 755-15 Disposal of Unwanted Radioactive Material.

TM 3-261 Handling and Disposal of Unwanted Radioactive Material.

TM 5-629 Herbicide Manual for Noncropland Weeds.

TM 5-630 Ground Maintenance and Land Management.

TM 5-632 Military Entomology Operational Handbook.

TM 38-250 Packaging and Materials Handling: Preparation of Hazardous Materials for Military Air Shipment.

TABLE 6-3—PESTICIDE CONTAINER DISPOSAL GUIDELINES

RECOMMENDED INTERIM GUIDELINES FOR DISPOSAL OF EMULSIFIABLE CONCENTRATE METAL CONTAINERS

Step 1. Empty containers in the normal manner and allow to drain for one minute into the spray or mix tank.

Step 2. First Rinse.

a. Add the correct amount of water rinse solution:

	Minimum water rinse solution
Container size:	
Less than one gal	One-fourth container volume.
One gal	One quart.
Five gal	Two quarts.
Fifteen gal	1.5 gallons.
Thirty gal	Three gallons.
Fifty-five gal	Five gallons.

b. Replace closure.

c. Rotate and up end container to get rinse over all interior surfaces.

d. Drain rinse into the spray or mix tank.

Step 3. Second Rinse.

a. Repeat step 2 a thru c.

b. Puncture head of the metal container near the edge adjacent to the pour spout and drain the rinse into the spray or mix tank.

NOTE: If 15-55 gallon containers are to be recycled through a registered drum reconditioner, DO NOT PUNCTURE the containers

Step 4. Third Rinse.

a. Repeat Step 2, but gently rotate the drum to rinse interior of the container being careful not to spill rinse through the puncture area.

b. Metal containers up to and including five gallon size:

(1) Allow rinsed container to drain for one minute into the spray or mix tank.

(2) Crush the rinsed container and bury in sanitary landfill in conformance with State and local standards, or recycle through a properly equipped metal reclaiming firm, if applicable.

c. Metal containers, 15-55 gallon capacity:

(1) Allow the rinsed container to drain for one minute into the spray or mix tank.

(2) Replace all closures, accumulate rinsed drums in a secure area, and:

(a) Recycle through a registered drum reconditioner; or [1]

(b) Return to a pesticide manufacturer or formulator for refilling with the same chemical class of pesticide providing such return and reuse is legal under currently applicable U.S. Department of Transportation regulations; [1] or

(c) Recycle as scrap metal through a metal reclaiming firm.

(3) If drums are not recycled, they should be rinsed and punctured as outlined in Step 3, crushed and buried in a sanitary landfill in conformance with State and local standards.

NOTE: Never re-use emptied pesticide containers.

RECOMMENDED INTERIM GUIDELINES FOR DISPOSAL OF TECHNICAL GRADE METAL CONTAINERS

Step 1. Empty container should be allowed to drain for one minute into the spray tank.

Step 2. Replace closure.

Step 3. Accumulate unrinsed empty drums in a secure area, and:

a. Store pending receipt of DOD disposal instructions; or

b. Return empty drums to a registered drum reconditioner [1] or a pesticide manufacturer or formulator for refilling with the same chemical class of pesticide as previously contained provided such return and refilling is legal under current applicable U.S. Department of Transportation regulations; [1] or

c. Recycle as scrap metal through a metal reclaiming firm having EPA and/or State approved burning equipment suitable for incineration of pesticides.

RECOMMENDED INTERIM GUIDELINES FOR DISPOSAL OF SPECIFIED CONTAINERS (BAIT, DUST, AEROSOL AND GRANULE)

Step 1. Empty container in the normal manner.

a. Residue should be completely removed from bait, dust and granule containers.

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[1] Information on registered drum reconditioners "Reuse of Specification 17 Series Steel Drums" and the reuse of empty pesticide containers may be obtained from:

Department of Transportation, Office of Hazardous Materials, Operations Division, 400 Sixth Street, SW., Washington, D.C. 20590.

BEST COPY AVAILABLE

b. Aerosol containers should be completely expended.[2]

Step 2. Crush container with the exception of aerosol containers.

Step 3. Dispose container in the sanitary landfill in conformance with State and local standards, or accumulate and recycle the crushed metal containers through a properly equipped metal reclaiming firm, if applicable.

NOTE: Never re-use emptied pesticide containers.

RECOMMENDED INTERIM GUIDELINES FOR DISPOSAL OF WATER WETTABLE POWDER CONTAINERS (METAL AND PAPER)

Step 1. Empty container in the normal manner.

Step 2. Rinse container three times, each time using a volume of water equal to approximately 10 percent of the container capacity and adding the rinse water to the spray tank. This rinse water should be calculated as part of the required diluent.

Step 3. Rinsed metal containers can be crushed and sold as scrap metal, if applicable. Unsalvaged containers should be rendered unuseable and buried in an approved sanitary landfill in conformance with State and local standards.

NOTE: Never re-use emptied pesticide containers.

RECOMMENDED INTERIM GUIDELINES FOR DISPOSAL OF ONE GALLON OIL SOLUTION READY-MIX METAL CONTAINERS (6840-844-7355 DIAZINON 0.5 PERCENT; 6840-180-6069 BAYGON HOUSEHOLD SPRAY 1 PERCENT)

Step 1. Empty container in the normal manner.

Step 2. Puncture top of metal container near the edge adjacent to the pour spout and allow to drain for 5 minutes into the spray tank.

Step 3. The empty container should be crushed and buried in an approved sanitary landfill in conformance with State and local standards.

NOTE: Never re-use emptied pesticide containers.

TABLE 6-4—RECOMMENDED PROCEDURES FOR REPACKAGING LIQUID PESTICIDES AND DISPOSITION OF EMPTY CONTAINERS

1. Observe prescribed safety procedures during all operations to prevent spilling of, or exposure of personnel to the pesticides, and:

a. Stay up[illegible]d while pouring pesticides.

b. Do not drink, eat, smoke, or use tobacco in pesticide handling areas.

c. Wear neoprene or neoprene coated gloves and a neoprene or Buna-N rubber apron while repackaging.

d. Wear face shields or chemical goggles during repackaging.

e. Do not put fingers in mouth or rub eyes while repackaging.

f. Wash hands before eating, smoking, or using the toilet and immediately after repackaging.

g. Wear protective clothing; remove contaminated clothing immediately and launder before wearing again.

h. Work clothes and street clothes should not be stored in the same locker.

i. Workers should shower at the end of each shift or upon completion of repackaging operations.

j. Respirators or gas masks with proper canisters approved for the particular type of exposure by the U.S. Bureau of Mines or the National Institute for Occupational Safety and Health should be available. Combat masks (M17, M17A1) should not be used.

k. Leaking containers should be repackaged under the supervision of the Installation Facilities Engineer's pest management personnel.

2. Approved containers for repackaging liquid pesticides are:

Five gallon-FSN 8110-282-2520, Drum Metal: New; 22 USS sheet metal gage steel; enamel exterior; nonremovable ends, $13\frac{9}{16}$ in. outside H, $11\frac{1}{4}$ in. OD; five gal. normal filled capacity; bail attached to top; spout; FED PPP-P-704, Type 1, Class 8, push-pull spout.

Fifty-five gallon-FSN 8110-597-2353, Drum, Shipping and Storage: 16 USS sheet metal gage steel; enamel exterior; nonremoval cover, $35\frac{1}{16}$ in. outside H, $23\frac{7}{16}$ in. OD; 55 gal. capacity; two expanded outward rolling hoops; bung and vent located in end; reusable; FED PPP-D-729, Type 1.

3. When repackaging liquid pesticides, the interior surface of each metal drum FSN 8110-282-2520 and FSN 8110-597-2353, shall be completely lined with two coats, .0015 inch total thickness, of bisphenol epoxide and phenol-formaldehyde resins mixture conforming to MIL-V-12276D, Type III, class optional.

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[2] In expending aerosol containers, some propellant usually remains. This propellant can be ignited if a large quantity of aerosol cans are crushed while being disposed in sanitary landfill operations. The vapors of propellant (in sufficient volume) can be sucked over the hot bulldozer engine by its fan and such vapors can ignite, consuming the equipment and operators in flames. Therefore, never store spent aerosol cans for disposal at one time; rather dispose them either singly or in quantities of no more than six cans.

4. Empty the leaking container into one of the above approved containers and mark as shown in paragraph 8 or 9.

NOTE: Do Not Combine Pesticides During Repackaging.

5. After emptying the contents of a container, puncture the top of the container near the edge adjacent to the pour spout and allow one gallon containers one additional minute and larger containers 3 to 5 additional minutes to drain.

6. With storage some pesticides develop sludges or crystals that solidify and adhere to the bottom of the container. Should this occur, dissolve with a solvent and add the dissolved sludge to the new container being used to repackage the contents of the leaking container. Pesticides containing sludges are considered unserviceable.

7. Container Rinse Procedures.

a. Rinse the empty container three times, each time using a volume of the normal diluent equal to approximately 10 percent of the container's capacity. The diluent for 5 percent DDT, FSN 6840-253-3892, is kerosene; diluents for other pesticides are indicated on the pesticide container labels.

	Minimum diluent required for each rinse
Container size:	
One gallon (qt.)	1.0
Five gallon (qts.)	2.0
Fifteen gallon (gal)	1.5
Thirty gallon (do)	3.0
Fifty-five gallon (do)	5.0

b. Add the correct amount of rinse solution and GENTLY ROTATE the container for one minute to get the rinse over interior surfaces avoiding spillage of the rinse through the leaking areas.

c. Drain the rinse into an approved container. Note: Never re-use emptied pesticide containers.

(1) For a pesticide declared SERVICEABLE, drain the rinse into a separate container. DO NOT RINSE INTO THE CONTAINER BEING USED TO REPACKAGE THE CONTENTS OF THE LEAKING CONTAINER. (Serviceability must be verified by a quality assurance test.)

(2) For a pesticide declared UNSERVICEABLE, drain the rinse into the container being used to repackage the contents of the leaking container.

d. Repeat paragraphs 7b and c (second rinse).

e. Repeat paragraphs 7b and c (third rinse), and:

(1) Allow to drain for 5 minutes into one of the above approved containers.

(2) Crush and bury empty containers in a sanitary landfill in conformance with Federal, State and local standards or recycle rinsed containers to a commercial metal reclaiming firm having EPA and/or State approval burning equipment suitable for incineration of pesticides.

8. Labeling containers of UNSERVICEABLE pesticides (diluted or undiluted) and rinse solutions.

a. Marking shown on one side of drum will not occupy more than the upper one-third of the side:

(1) WASTE MATERIAL NOT APPROVED FOR USE.

(2) FSN—Repackaged.

(3) Nomenclature and percentage.

(4) Type and quantity of rinse solution added to repackaged container.

(5) Total quantity in gallons.

(6) Level of protection and date packaged (B-month/year).

(7) Gross weight and cube.

b. Marking shown on drum head or ends not removed in order to use contents (applies to 55 gallon drums only):

(1) WASTE MATERIAL NOT APPROVED FOR USE.

(2) FSN—Repackaged.

(3) Total quantity.

9. Labeling containers of SERVICEABLE pesticides.

a. Marking shown on one side of drum will not occupy more than the upper one-third of the side:

(1) FSN—Repackaged.

(2) Nomenclature and percentage.

(3) Total quantity in gallons.

(4) Level of protection and date packaged (B-month/year).

(5) Gross weight and cube.

b. Marking shown on drum head or ends not removed in order to use contents (applies to 55 gallon drums only):

(1) FSN.

(2) Nomenclature and percentage.

(3) Total quantity.

(4) Lot or batch numbers.

(5) Date of pack (earliest repackage date).

(6) Contract number(s).

(7) Name and address of the contractor(s).

c. Marking shown on the diametrically opposite side of the container from that containing the identification marking and will be located in the upper one-third of the side:

(1) Contract, purchase, or delivery order number(s).

(2) Name(s) and address(es) of prime contractor(s).

d. In order for repackaged pesticides to be considered serviceable, returned to the supply system, transferred or sold for use as originally intended, an additional label which conforms with the original EPA or USDA registered label to include the registration number must be attached. If the item does not have an EPA or USDA registered label, the additional label must then conform to the labeling instructions contained in the original military or Federal specification for each line item.

10. Storage.

a. Store UNSERVICEABLE repackaged pesticides with other UNSERVICEABLE pesticides and hold pending DOD disposal instructions.

b. Store SERVICEABLE repackaged pesticides with other SERVICEABLE pesticides and use for intended purpose.

11. Reference.

39 FR 15235-15241, May 1, 1974, Environmental Protection Agency, Pesticides and Pesticide Containers, Regulations for Acceptance and Recommended Procedures for Disposal and Storage.

Subpart G—Environmental Noise Abatement

GENERAL

§ 650.161 Purpose.

The provisions contained in this chapter implement the provisions of the Noise Control Act of 1972 (Pub. L. 92-574) and Federal Regulations promulgated pursuant to this Act, including Executive Order 11752, Office of Management and Budget Circular No. A-106, and EPA procedures for Reporting Proposed Pollution Abatement Projects For Federal Facilities.

§ 650.162 Goal and objectives.

The Department of the Army (DA) goal is to control noise produced by Army activities to protect the health and welfare of its members and the public within, adjacent to, and surrounding Army installations. The following objectives are necessary to achieve this goal:

(a) Assess the environmental impact of noise produced by Army activities and mitigate harmful or objectionable effects to the maximum extent practicable.

(b) Comply with applicable Federal, State, interstate and local standards pertaining to noise, consistent with military requirements.

(c) Achieve noise abatement through the application of engineering noise reduction procedures, administrative noise control measures, modern land use planning and procurement of less noisy equipment.

(d) Incorporate noise control provisions, consistent with national security requirements, into the development and procurement of weapons systems and other military equipment for use in combat operations; and in the design and siting of facilities.

§ 650.163 Explanation of terms.

(a) *Administrative noise control measures.* Policy decisions and administrative actions taken to regulate the conduct of training, operations and activities for the purpose of relocating, rescheduling, or restricting activity to abate or control noise; e.g., decisions on the time of day, site, and number of operations, firing schedules, flight patterns, etc.

(b) *Ambient noise.* The all encompassing noise associated with a given environment, usually composite of sounds from many sources.

(c) *Decibel (dB).* Unit of measure indicating the sound pressure level of a measured sound. dBA indicates that the sound level is measured through the A-weighting network of a sound level meter.

(d) *Engineering noise reduction.* Control of noise at the source, path or receptor site through use of acoustical engineering techniques. Among other techniques, this involves enclosures, absorbent materials, and barriers.

(e) *Environmental noise.* The intensity, duration, and character of sounds from all sources.

(f) *Impulsive noise (also referred to as impulse or impact noise).* Noise with abrupt onset, high intensity, short duration—typically less than one second. This type of noise can be produced by weapons fire, explosions, punch presses, and drop hammers, and consists of a short burst of acoustical energy of either a single impulse or a series of impulses.

(g) *Land use planning.* That aspect of master planning wherein the best possible use is made of available land areas by considering, among other factors, mission and environmental protection requirements.

(h) *Noise control management.* The abatement of noise through use of low-noise-emission products, engineering noise reduction, or administrative noise control measures.

(i) *Noise pollution control standards.* Noise emission standards for products adopted in accordance with provisions of the Noise Control Act of 1972 or provisions of State, interstate, and local standards for control and abatement of environmental noise.

§ 650.164 Policies.

The Department of the Army will—

(a) Comply with all DOD and applicable Federal, State and local noise control standards promulgated pursuant to the Noise Control Act in the planning, siting, design, construction and operation of Army controlled facilities and installations. The aim is to promote an environment for all people free from noise that jeopardizes their health and welfare.

(b) Procure commercial equipment and products, or those adapted for military use, that are in compliance with established Federal noise standards and give priority to use of low-noise-emission products within reasonable cost and mission limitations.

(c) Incorporate noise control provisions in the design and procurement of vehicles, aircraft, weapons systems and other military-unique equipment for use in combat operations to the extent that essential operational capabilities are not significantly impaired.

(d) Include the impact of environmental noise in any assessment of an Army action or program.

(e) Institute measures to reduce and/or control the generation of noise from flying and flying-related activities and comply with DOD Instruction 4165.57 on Air Installations Compatible Use Zones (AICUZ).

(f) Periodically monitor Army installations and their environs to insure that applicable Federal, State, interstate and local noise standards are met.

§ 650.165 Responsibilities.

(a) Department of the Army Staff.

(1) The Chief of Engineers will—(i) Promulgate basic policies, guidance and regulations for the control of environmental noise produced by military equipment (aircraft, vehicles, etc.), and that resulting from the conduct of various types of military training activities (DAEN-ZCE).

(ii) Monitor the structural engineering aspects of the environmental noise pollution control program to assure that facilities on Army real property satisfies established noise control standards (DAEN-MC).

(iii) Provide guidelines and assistance for the selection of architectural and engineering measures to be employed, to control noise levels in conjunction with installation master planning or the siting of new facilities (e.g., siting considerations, noise barriers or berms, operational controls, and sound attenuation in new and existing structures) (DAEN-MC).

(iv) Coordinate noise abatement criteria, standards, policies, and corrective measures with The Surgeon General, and The Inspector General and Auditor General, (Army Director of Safety).

(v) Incorporate noise attenuation measures in the design and construction of new structures and provide technical assistance on noise attenuation techniques for existing structures (DAEN-MC).

(2) The Deputy Chief of Staff for Operations and Plans will—(i) Monitor operations and activities to assure control of noise produced by military equipment, aircraft, and vehicles, resulting from the conduct of various types of military training activities.

(ii) Ensure compliance with appropriate noise standards during test and evaluation of Army material and during operational testing.

(3) The Deputy Chief of Staff for Research, Development and Acquisition will—(i) Monitor compliance with applicable noise control standards during the development and testing of new material.

(ii) Process and staff requests for exemptions (§ 650.175) for military unique equipment where essential operational characteristics are significantly impaired by adherence to applicable noise standards, and where the equipment is deemed essential to mission accomplishment.

(4) The Surgeon General will—(i) Monitor health and welfare aspects of environmental noise within the Department of the Army to assure that

the required degree of noise control is maintained.

(ii) Issue health and medical policy guidance obtained from liaison with other Federal agencies assigned responsibility for environmental noise control.

(iii) Coordinate in the development of noise abatement criteria, standards and corrective measures with the Chief of Engineers and when appropriate with Director of Safety, HQDA.

(b) Commanding General, US Army Health Services Command will—

(1) Accumulate, evaluate, and disseminate data on environmental noise conditions that may adversely affect the health of men and animals.

(2) Conduct environmental noise studies when requested, provide acoustical technical assistance for preparation of Environmental Impact Assessments (EIA) or Environmental Impact Statements (EIS) and make recommendations on programs or projects to achieve noise pollution control.

(3) Provide technical consultation to commanders on health aspects of environmental noise control and assist in the development of environmental noise abatement programs for facilities and activities.

(c) Commanding General, US Army Materiel Development and Readiness Command and other materiel development and procurement agencies will—

(1) Procure equipment or materiel which complies with DA adopted noise emission standards and retrofit existing vehicles as appropriate, to reduce noise to acceptable levels.

(2) Initiate and forward requests for waiver of noise standards for military equipment to DAEN-ZCE when it has been determined that compliance with such standards would significantly degrade the required military capability of the equipment.

(3) Pursue a research and development, test and evaluation program for the abatement or control of noise from military equipment.

(d) Major Army commanders will—

(1) Comply with applicable Federal, State, interstate, and local standards regarding environmental noise control and abatement.

(2) Establish a program for an initial survey and periodic review of environmental noise control.

(3) Program and budget for those resources required for environmental noise control.

(4) Report resource requirements for the conduct of the noise pollution control program in accordance with Subpart J of this part.

(e) Installation and activity commanders will—

(1) Comply with applicable Federal, State, interstate, and local standards regarding environmental noise.

(2) Identify continuous or recurring sources of noise at an installation or by an activity which exceed standards; are an annoyance to others; are injurious to health; and develop remedial projects or procedures to reduce such noise to acceptable levels.

(3) Monitor the conduct of training activities producing inherently high noise levels for the purpose of minimizing its effect on nearby military and civilian populations.

(4) Maintain liaison with appropriate Federal, State, and local noise pollution abatement authorities, for the purpose of noise control measures insofar as installation and military operational requirements permit in accordance with Subpart A of this part.

(5) Program and budget for resources necessary to conduct an effective noise control program.

(6) Maintain a log of citizen complaints of noise produced by Army activities.

§ 650.166 Reports.

Sources of noise pollution will be identified and those requiring remedial action will be reported as specified in Subpart J of this part. An example of an exhibit prepared on a typical environmental noise control project is shown in Figure 10-7.

§ 650.167 References.

See table 7-1, for related publications to be used in conjunction with this subpart.

STANDARDS AND PROCEDURES

§ 650.168 Standards.

(a) Undue exposure to noise may be detrimental to the health and welfare of Department of the Army personnel and members of civilian communities adjacent to military installations. Consequently it is necessary to assess major sources of noise to ensure there are no adverse impacts. Normally this is accomplished by making sound level measurements and comparing them to established noise standards which include:

(1) Occupational noise level standards—a noise exposure standard established for the protection of hearing of workers by the Army Surgeon General and/or under the Occupational Safety and Health Act.

(2) Product noise source emission standards—maximum noise levels that may be produced by specified items of equipment under the authority of the Noise Control Act or State, interstate and local standards.

(3) Environmental noise standards—property use and/or operational noise levels that are permitted under those conditions specified in Federal, State, interstate and local standards and regulations.

(b) Occupational noise level standards applicable to the Army are contained in AR 40-5, AR 385-10, TB MED 251 and MIL-STD-1474(MI).

(c) Product noise emission standards are published in the Code of Federal Regulations (CFR). Army materiel excluded from compliance with such emission standards at the time of manufacture are aircraft, vehicles, weapons systems and other products produced for combat use. Commercially manufactured products or those adapted for general military use will comply with the following Federal noise standards:

(1) Commercial Aircraft—14 CFR Parts 21, 36 and 91.

(2) Motor Carrier Noise Emission Standards—40 CFR Part 202 and 23 CFR Part 772. (Section 18 of Noise Control Act only.)

(3) Motors and Engines—40 CFR Part 206.

(4) Railroad Noise Emission Standards—40 CFR Part 201.

(5) Construction Equipment—40 CFR Part 204.

(6) Transportation Equipment—40 CFR Part 205.

(d) MIL-STD-1474(MI), Noise Limits for Army Materiel, establishes acoustical noise limits for Army materiel and prescribes the testing requirements and measurement techniques for determining conformance to the noise limits therein.

(e) Environmental noise will be assessed and controlled in accordance with the provisions set forth herein.

§ 650.169 Noise measurement standards.

(a) Noise pollution control standards are applicable to both existing and new Army facilities.

(b) Army facilities and activities will comply with applicable Federal, State, interstate and local noise standards unless a waiver is specifically obtained in accordance with § 650.175. Where no applicable noise regulations and standards exist, installation commanders will minimize noise intrusions into areas surrounding the installations to prevent them from being a source of complaint. An EPA manual that provides general guidance in the absence of specific standards is listed in 15, table 7-1.

(c) Measurements in decibels (dBA) should be used for measuring continuous sound levels from Army activities or facilities. For impulse noise such as weapons firing and explosives, the EPA has recommended dBC.

(d) Environmental noise levels should be identified using an equivalent sound level description system known as Leq/Ldn. This new methodology supplements and replaces earlier techniques such as Composite Noise Ratings (CNR) and Noise Exposure Forecast (NEF). The basic reference is EPA Document 550/9-74-004, "Information on Levels of Environmental Noise Requisite to Protect Public Health and Welfare with an Adequate Margin of Safety," March 1974. It is available from the U.S. Government Printing Office. Use will be made of this descriptor system in discussing noise implications in all Environmental Impact Assessments (EIA) and Environmental Impact Statements (EIS).

Other rating schemes may be used, but should be related to Leq/Ldn. Ldn is recommended by EPA for blast impulse noise on an interim basis pending further research and study.

§ 650.170 Assessment of noise.

The impact of environmental noise whose source is located on Army-controlled property will be included in an EIA or an EIS of any Army proposed action. Analyses of such significant sources of environmental noise as airfields and firing ranges should be based on field measurements by acoustical technicians.

(a) Technical assistance on land use management or real property associated noise problems (e.g., blast noise, etc.) can be obtained from U.S. Army Construction Engineering Research Laboratory (CERL), P.O. Box 4005, Champaign, IL 61820. A helpful reference on this matter is the CERL document: "User Manual for the Acquisition and Evaluation of Operational Blast Noise Data," Technical Report E-42 CERL, June 1974 (NTIS), see table 7-1).

(b) Technical assistance to include field surveys and the preparation of environmental noise pollution evaluations relating to health and welfare considerations of all types of environmental noise problems can be provided by the U.S. Army Environmental Hygiene Agency. Requests for assistance should be sent to Commander, U.S. Army Health Services Command (HSC-PA), Fort Sam Houston, TX 78234. This assistance includes—

(1) The evaluation of existing or potential noise problems which are evidenced by complaints, litigation, or official inquiries;

(2) The assessment of those situations where existing or proposed civilian-community actions may adversely impact noise-sensitive areas located on Army installations;

(3) The assessment of those situations where a proposed civilian community action may be adversely impacted from an ongoing Army activity;

(4) The recommendation of measures to mitigate an existing or potential adverse noise impact;

(5) The evaluation of Department of the Army activities to ensure that they comply with applicable noise standards and regulations; and

(6) The conduct of environmental noise assessments as input to EIS's excluding all projects involving land management and acquisition.

(c) Technical assistance, such as information and technical documents, is also available from the EPA. Inquiries may be sent directly to EPA Office of Noise Abatement & Control, Washington, D.C. 20460, or to the noise representative in the respective EPA Region (see fig. 9-1 and table 9-3).

§ 650.171 Noise sources.

Common sources of environmental noise produced by military activities that may require some form of noise control include—

(a) Aircraft operations and training.

(b) Vehicles (combat and noncombat) operations and training.

(c) Weapons firing, explosives and demolition operations and training (blast noise, § 650.169(d)).

(d) Fixed noise sources (power plants and generators, manufacturing plants, industrial facilities, carpenter shops, dynamometer buildings etc.)

(e) Electrical and electronic equipment.

(f) Construction equipment operations and training.

(g) Recreational activities (e.g., snowmobiles, trailbikes, etc.)

(h) All other noise sources that exceed 55 dBA measured at a distance of 50 feet from the source.

§ 650.172 Noise control.

(a) Control of new and existing sources of environmental noise can normally be achieved by applying singly or in combination noise reduction at the source, altering the path of noise, and noise reduction at the receptor site. Further, low-noise-emission products and equipment will be acquired wherever possible.

(b) Engineering noise controls, establishment of noise buffer zones, site design and building construction for noise control, and similar land use planning techniques will be employed in the siting and design of new military structures and facilities.

(c) Projects and resources required to control sources of environmental noise, reported in accordance with § 650.166, will be programed and budgeted using established procedures.

(d) To preclude the need for expensive engineering noise reduction techniques, the impact of environmental noise should be integrated into military land use planning. Attention will be given such matters in the master planning process (AR 210-20) with particular emphasis on—

(1) Routes of high volume traffic flow.

(2) Family housing area locations.

(3) Location of off-post residential areas.

(4) Sites of hospital complexes.

(5) Sites for on-post and off-post school facilities.

(6) Sites for new ranges, impact areas and airfields.

(e) The identification of critical noise rating contours at an installation for the purpose of aiding in land use planning will be a required component of each installation master plan (AR 210-20). Assistance in preparing data for these contours can be obtained through the Office Chief of Engineers (DAEN-MCE-P) and Construction Engineering Research Laboratory (CERL). Requests for such assistance are to be forwarded in accordance with reference CERL Technical Report E-42, table 7-1. Blast noise, helicopter noise and truck noise programs are under development and OCE will issue Technical Reports in each area.

(f) Technical assistance in quantifying noise problems, identifying possible violation of standards, making noise surveys for inclusion in environmental impact assessments or impact statements, etc., may be requested from the US Army Environmental Hygiene Agency (USA-EHA) in accordance with § 650.170(b).

§ 650.173 Noise complaints.

While not to be used as the sole criterion for judging the severity of environmental noise impacts, citizen complaints may be indicators of situations where noise control measures will be necessary. Such complaints should be logged, investigated, and appropriate corrective measures taken wherever possible. In many instances, such problems can be resolved to the mutual satisfaction of the Army and the community through direct consultation among those involved.

§ 650.174 Low-noise-emission products.

Under section 15 of the Noise Control Act of 1972 (Pub. L. 92-574), the US Environmental Protection Agency is responsible for administering a national program for the development of low-noise-emission products. EPA certifies new products whose noise emissions are significantly below the EPA source emission standards for these products as low-noise-emission products. Such certified products of a commercial nature will be acquired by purchase by the Army in lieu of other products if the Administrator of General Services determines that the product costs no more than 125 percent of the retail price of the least expensive type of product for which these are certified substitutes. Those products found to meet the low-noise-emission criteria will be announced as available through regular supply procurement sources (40 CFR Part 203 and Noise Control Act of 1972, section 15).

§ 650.175 Waivers and exemptions from noise standards.

Requests for exemption or waiver of a Federal or State noise standard will be forwarded through channels to HQDA (DAEN-ZCE) WASH DC 20310 who will take appropriate action to obtain OSD approval. Waivers will be requested for the specified period of time (normally one year) needed to permit compliance. Exemptions must be fully justified on the basis of mission accomplishment and military necessity.

TABLE 7-1.—RELATED PUBLICATIONS

Executive Order 11514, Protection and Enhancement of Environmental Quality, March 7, 1970 (35 FR 4247).

Executive Order 11752, Prevention, Control, and Abatement of Environmental Pollution at Federal Facilities, December 19, 1973 (38 FR 243).

DOD Instruction 4165.57, Air Installation Compatible Use Zones, July 30, 1973.

Noise Control Act of 1972, Pub. L. 92-574 (86 Stat. 1248).

Amendment to the Federal Aviation Act of 1958 to require Aircraft Noise Abatement (Pub. L. 90-411).

AR 40-5 Health and Environment.

AR 210-20 Master Planning for Permanent Army Installations.

AR 385-10 Army Safety Program.

AR 750-20 Prevention, Control, and Abatement of Pollution from Mobile Equipment.

TB MED 251 Noise and Conservation of Hearing.

MIL-STD 1474 (MI), Noise Limits for Army Material.

User Manual for the Acquisition and Evaluation of Operational Blast Noise Data, Technical Report E-42, Construction Engineering Research Laboratory, June 1974. Available under AD No. 782-911/2G1 from National Technical Information Service (NTIS), Springfield, VA 22151.

Predicting Community Response to Blast Noise, Technical Report E-17, Construction Engineering Research Laboratory, December 1973. Available under AD No. 773-690 from NTIS, Springfield, VA 22151.

HUD Dept. Circular 1390.2, Noise Abatement and Control: Department Policy, Implementation Responsibilities, and Standards.

EPA Document #6E 550/9-74-004, Information on Levels of Environmental Noise Requisite to Protect Public Health and Welfare with an Adequate Margin of Safety (March 1974).

Subpart H—Historic Preservation

GENERAL

§ 650.181 Purpose.

This chapter sets forth guidance and procedures to be used by the Department of the Army in the implementation of Executive Order 11593, "Protection and Enhancement of the Cultural Environment" (36 FR 8921, 16 U.S.C. 470), in accordance with:

(a) The Antiquities Act of 1906 (34 Stat. 225, 16 U.S.C. 431 et seq),

(b) The Historic Sites Act of 1935 (49 Stat. 666, 16 U.S.C. 461 et seq.),

(c) The National Historic Preservation Act of 1966 (80 Stat. 915, 16 U.S.C. 470 et seq.),

(d) The National Environmental Policy Act of 1969 (83 Stat. 852, 42 U.S.C. 4321 et seq.),

(e) The Archeological and Historic Preservation Act of 1974 (88 Stat. 174, 16 U.S.C. 469 et seq).

§ 650.182 Goal and objectives.

The Department of the Army goal is to protect through preservation, restoration, or rehabilitation all sites, structures and objects of historical, architectural, archeological, or cultural significance located on Army-controlled property. Objectives in attaining this goal are to identify, report and take those actions necessary to protect and preserve those Army-controlled properties (Historic Properti

§ 650.183 References.

Related publications which should be used in conjunction with this regulation are contained in table 8-1.

§ 650.184 Policy.

The National Historic Preservation Act of 1966 (Pub. L. 89-665) establishes a national policy for historic preservation stating "that the historical and cultural foundations of the nation should be preserved as a living part of our community life and developed in order to give a sense of orientation to the American people." Therefore, it is the policy of the Department of the Army to—

(a) Locate, inventory, evaluate, and nominate to the Secretary of the Interior all properties under Army jurisdiction or control that appear to qualify for inclusion in the National Register of Historic Places (National Register).

(b) Administer and maintain historic properties which are under Army control or jurisdiction in a spirit of stewardship and trusteeship for future generations.

(c) Assess all Army-controlled activities to minimize, eliminate, or mitigate any adverse impact on historic properties.

(d) Initiate, plan and budget for support of programs necessary to preserve, restore, or rehabilitate historic properties.

(e) Coordinate, when applicable, plans, programs, procedures, and activities with the Advisory Council on Historic Preservation, the Secretary of Interior, State Historic Preservation Officers, The National Trust For Historic Preservation, the Smithsonian

Institution, and other Federal, State, or local historic organizations.

(f) Encourage and assist the Secretary of the Interior, non-Federal public agencies, local historical societies or similarly oriented organizations to administer and maintain historic properties where such activity does not adversely impact on the performance of the Army mission.

§ 650.185 Definitions.

Definitions as used in these procedures are contained in § 800.3, 36 CFR Part 800 (appendix).

§ 650.186 Responsibilities.

(a) The Chief of Engineers will exercise primary Army staff responsibility for directing and coordinating a Preservation Program for Army-controlled historic properties. The Chief of Engineers will—

(1) Promulgate policy and regulations on protection and enhancement of the cultural and historic environment which reflect Department of Defense guidance and policy.

(2) Establish and monitor the program to preserve, restore, or rehabilitate all Army-controlled properties of historical, architectual, archeological, or cultural significance.

(3) Monitor surveys to identify all Army-controlled properties of historical, architectural, archeological or cultural significance.

(4) Provide guidance and direction to Army installations on the preparation of nominations to the National Register and reports submitted under section 106 of Pub. L. 89-665 and Executive Order 11593, as implemented in 36 CFR Part 800 (appendix).

(5) Maintain, as part of the Inventory of Real Property, a record of all Army-controlled properties listed in the National Register. This record will include a copy of the nomination forms with all attachments for each listing and a record of all reports and memoranda of agreement as required under 36 CFR Part 800 (appendix).

(6) Review and evaluate construction programs and master plans to minimize or eliminate adverse impacts on Army-controlled properties of historical, architectural, archeological, or cultural significance.

(7) Ensure that all actions undertaken with this guidance have been coordinated, where applicable, with local historical societies; State Historic Preservation Officers (SHPO); the Secretary of the Interior; the Advisory Council on Historic Preservation; the Smithsonian Institution; and the National Trust for Historic Preservation (appendix).

(8) Issue guidance and provide technical assistance on the development and execution of historic preservation projects.

(9) Process permits to authorize archeological investigations (AR 405-80).

(b) The Chief of Military History will—

(1) Publish a comprehensive listing of Army-controlled properties listed in the National Register to include the historic significance, photographs and other factors as deemed appropriate. This publication will be updated with a supplement published every 3 years thereafter.

(2) Provide professional support as requested.

(c) Major Army commands (MA COMs). Major Army commanders will develop programs, in accordance with TM 5-801-1, Historic Preservation, which will encompass, at a minimum, the following:

(1) The conduct of initial, and triennial surveys thereafter, of installations under their control or jurisdiction to identify all properties of historical, architectural, archeological, or cultural significance.

(2) The programing and budgeting of funds for the maintenance through preservation, restoration, or rehabilitation of structures, sites and objects of historical, architectural, archeological or cultural significance.

(3) The retention and use of historic properties which are a functional part of Army installations or are so located that their disposal is impractical.

(4) The nomination to the National Register of all Army-controlled properties which appear to meet the minimum criteria established by the Secretary of the Interior (appendix).

(5) The coordination of proposed actions having an effect on a registered and/or nominated historic property with the SHPO and the Advisory

Council on Historic Preservation as required by 36 CFR Part 800. (§ 650.190 and appendix).

(6) The inclusion, where applicable, of evidence of compliance with 36 CFR Part 800 in each environmental assessment or environmental impact statement (§ 650.190).

(7) The maintaining of a record of each property under their control or jurisdiction which is listed in the National Register including a copy of the nomination forms with all attachments and a record of all reports and Memoranda of Agreement as required under 36 CFR Part 800.

(8) The protection of archeological sites by insuring that all investigations, excavations and salvage activities are undertaken with the written concurrence of the Secretary of the Interior and the Smithsonian Institution in accordance with AR 405-80.

STANDARDS AND PROCEDURES

§ 650.187 Standards.

The preservation, restoration, rehabilitation and maintenance of historic properties under Army control or jurisdiction will be accomplished in accordance with the standards and procedures established by the Secretary of the Interior and as promulgated by the Chief of Engineers in TM 5-801-1, Historic Preservation.

§ 650.188 Procedures for preparing nominations to the National Register (RCS DOI-1005).

Procedures for preparing nomination forms for Army controlled properties which appear to qualify for listing in the National Register of Historic Places are contained in TM 5-801-1. Completed forms will be forwarded through channels to HQDA (DAEN-FEB-P) WASH DC 20314. RCS DOI-1005 applies.

§ 650.189 Funding of historic preservation activities.

(a) Funding for the requirements for historic properties will be accomplished through regular programing/budgeting channels.

(b) Historic properties in the Army Family Housing inventory will be funded in the Family Housing Management Account (FHMA). Requirements for historic properties other than family housing will be supported by the appropriation financing all other real property maintenance activities on the installation.

(c) Projects for restoration and/or rehabilitation of historic properties, which include construction-type work in excess of $50,000, will be included in the installation's military construction programs for accomplishment under Military Construction Army (MCA) or FHMA programing procedures as outlined in AR 415-15 and AR 210-50. Block 25 of DD Form 1391 (Military Construction Project Data) of these projects will contain a statement identifying the project as supporting a historic property listed in the National Register.

(d) Projects for preservation of registered historic places, which include construction-type work not in excess of $50,000, will be identified and processed for approval by the appropriate approving authority, as reflected in AR 415-35 and/or AR 420-10, and will be programed and budgeted in the normal budget cycle. Requirements will be identified to the proper supporting appropriation (FHMA, Operation and Maintenance Army (OMA) Operation and Maintenance, Army Reserve (OMAR) etc.) in the installation and command budget submissions (RCS CSAB 205 series), and specifically identified as supporting a historic property listed in the National Register (AR 415-15).

§ 650.190 Utilization of historic properties.

(a) Historic properties which are a functional part of Army installations or are so located that their disposal or outleasing is impractical will be preserved and maintained by the installation commander. All efforts will be made to utilize these properties for military purposes in order to justify funds expended under this program. The concept of "adaptive use" (TM 5-801-1) for these properties compatible with their cultural values will be observed, whenever possible. Where this is not possible, a stabilization project will be developed to prevent further deterioration of the property.

(b) In all instances, the planned use of a historic property listed in the National Register will be reviewed with the SHPO and the Advisory Council on Historic Preservation in accordance with 36 CFR Part 800 (§ 650.190 and appendix).

(c) Historic properties which would be more adequately administered by the Department of the Interior, non-Federal public agencies, local historical societies, or similarly oriented organizations should not be retained by the Army. Therefore, when there is no adverse impact on the performance of the Army mission, the installation commander may recommend, in the Analytical Report of the Installation Master Plan, the disposal of a historic property for historic monument purposes in accordance with AR 405-90 and the Federal Property and Administrative Services Act of 1949 as amended, or recommend its outleasing for historic preservation, park and recreation or similar purposes in accordance with AR 405-80. In the latter case, the installation commander's recommendations must include assurances that the grantee has a viable plan for use of the property in a manner compatible with preservation objectives and policies. In such instances, the installation commander will notify the SHPO and the Advisory Council on Historic Preservation and, if appropriate, consummate a "Memorandum of Agreement" that the proposed action will not adversely affect the historical, architectural, archeological or cultural value of the property (§ 650.191).

§ 650.191 Compliance procedures.

(a) The applicable Federal regulation that contains the review requirements of section 106 of Pub. L. 89-665 and Executive Order 11593 is 36 CFR Part 800, Procedures for the Protection of Historic and Cultural Properties, and is included in its entirety in the appendix.

(b) Any action which may have an effect on a National Register property or an historic place which appears eligible for listing in the National Register must go through two integral but separate review procedures. First, the environmental impact assessment (Subpart B of this part) must identify cultural resources potentially affected by the proposed action. Second, where the identification of cultural resources indicates that properties included in the National Register will be affected, evidence of compliance with the review requirements of 36 CFR Part 800 will be included in the environmental impact assessment and/or EIS Comments by the Advisory Council on Historic Preservation, should be included in the EIA or draft EIS and must be included in the final EIS.

(c) If there is an effect, but it is determined that the action will not have an adverse effect, a description of the proposed action together with the commander's determination of "no adverse effect" will be forwarded to the SHPO for comments. If the SHPO concurs in the findings, then a copy of this correspondence will be forwarded to the Executive Director of the Advisory Council on Historic Preservation (§ 650.191(f)). If there is no reply within 45 days, the action may proceed.

(d) If it appears that there will be an adverse effect, the installation commander will prepare a technical report documenting the identification of cultural resources, the assessment of the impact of the undertaking on those resources, and the feasibility of mitigative measures. All mitigative measures proposed to minimize adverse effects on properties included or eligible for inclusion in the National Register should have the concurrence of the SHPO and the Advisory Council on Historic Preservation and should be documented in a Memorandum of Agreement signed by all three parties. In most cases, an on-site inspection/consultation by the signees is required as part of the development of the Memorandum of Agreement. All correspondence regarding the determination of "no adverse effect," (§ 650.191(b)) or in obtaining a Memorandum of Agreement is to be forwarded to the parties directly involved with information copies to the appropriate major command and HQDA (DAEN-MCZ-E) WASH DC 20314.

(e) If a memorandum of agreement cannot be consummated, the case will be forwarded through Army channels to HQDA (DAEN-MCZ-E) WASH DC 20314, who will in turn forward it to the Advisory Council on Historic Preservation for review and evaluation. Where a Memorandum of Agreement cannot be obtained or an unfavorable ruling is obtained from the Advisory Council, then an Environmental Impact Statement containing the comments of the Advisory Council must be prepared covering the basic action and the proposed mitigative measures. If it is determined that the Army should proceed with the proposed action and that action will result in the destruction or major alteration of the property, then records of the property, including measured drawings, photographs, and written data will be prepared for deposit in the Library of Congress as part of the Historic American Buildings Survey or the Historic American Engineering Records in accordance with the standards promulgated by the Office of Archeology and Historic Preservation, Department of the Interior, Wash DC 20240. (TM 5-801-1 explains the standards and § 650.192 discusses archeology).

(f) Advice on matters relating to implementing 36 CFR Part 800 may be obtained from the Advisory Council on Historic Preservation as indicated below:

(1) Eastern Area: Executive Director, Advisory Council on Historic Preservation, Suite 430, 1522 K Street, NW, Washington, DC 20005, Telephone: (202) 254-3974.

(2) Western Area: Director, Western Office, Advisory Council on Historic Preservation, P.O. Box 25085, Denver, Colorado 80225, Telephone: (303) 234-4946.

§ 650.192 Archeological sites.

(a) The Secretary of the Army, under the authority of 16 U.S.C. 432, may issue archeological permits on Army-controlled installations after referral of the permit application to the Smithsonian Institution for his recommendations (AR 405-80).

(b) All Army-controlled property will be surveyed to identify and locate archeological sites. Due to the magnitude of such surveys, installation commanders will establish coordination with the appropriate field offices of the National Park Service, SHPO and/or EO 11593 consultant, to review current Army plans, programs and activities which may lead to the destruction of an archeological site and to develop survey schedules for affected areas. Since Army activities may necessarily lead to destruction of archeological sites, the survey must include value judgments assessing the relative significance of the surveyed sites so that destruction of the more significant archeological sites may be avoided.

(c) The National Park Service may not be able to provide timely surveys of archeological resources necessary for preparation of legally sufficient environmental statements on Army activities. In these cases, the installation commander is authorized to contract with outside experts for the survey of archeological sites after receipt of a written turndown by the National Park Service, except as limited in paragraph (c)(2) of this section. Copies of all such surveys should be furnished appropriate field officials of the National Park Service.

(1) While such inventories generally would be confined to a literature search and a reconnaissance of the affected area, there may be occasions when testing of archeological sites will be necessary in order to establish the need for the National Park Service to budget full-scale archeological survey programs at a later date.

(2) In any instance where estimated contract cost of such work exceeds $25,000, the matter must be referred to HQDA (DAEN-MCZ-E) WASH DC 20314 prior to consummation of a contract.

(d) A copy of the program requirements for archeological investigations and salvage activities as jointly determined by the installation commander and the National Park Service will be provided HQDA (DAEN-MCZ-E) WASH DC 20314, in order to assist in overall program coordination between DAEN-MCZ-E and the Office of Archeology and Historic Preservation, Department of the Interior.

(e) Salvage activities. (1) Procedures for authorizing archeological salvage activities on Army-controlled property are contained in AR 405-80.

(2) Installation commanders are responsible for instituting security measures for the protection of an archeological site during salvage operations. Assistance in salvage operations may be made when determined to be within the capability of the installation.

(3) Permits for archeological investigations and salvage activities will identify a museum responsible for preserving artifacts found as a result of the investigation. Therefore, where appropriate, permits for archeological investigations on Army-controlled property will designate the post museum as the recipient of all specimens. If the post museum is not appropriate, the Commanding General, US Army Center of Military History will determine which museum will be designated.

(f) In the event that a suspected archeological site is encountered during construction or some other form of activity, operations in the area will be suspended until the Secretary of the Interior is consulted and the site is investigated by a professional archeologist approved by the Secretary of the Interior. All construction contracting procedures, both through direct contracting or by the District Engineer, will be amended to require the provision to obtain expert archeological analysis as required. Installation commanders and District Engineers are authorized to expend funds appropriated for Army activities for the survey and salvage of scientific, historic, archeological and paleontological resources which are being or may be irreparably lost or damaged as a result of those Army activities. Such expenditures may not exceed one percent of the project amount.

§ 650.193 National historic landmarks.

(a) The National Park Service regularly surveys historic properties under the National Historic Landmark Program. Designation of a National Historic Landmark automatically places the property in the National Register of Historic Places.

(b) Notification from the Department of the Interior that Army-controlled property has been designated as a National Historical Landmark will be forwarded through channels to HQDA (DAEN-MCZ-E) Wash, DC 20314. Also, subsequent correspondence regarding the landmark such as plaque application, notifications of annual visits and other related matters will be forwarded to the Department of the Interior with information copies to HQDA (DAEN-MCZ-E) Wash. D.C. 20314.

TABLE 8-1.—RELATED PUBLICATIONS

The National Register of Historic Places—1972 USDI (Available from the Superintendent of Documents, US Government Printing Office, Washington, DC 20402. Price $7.80 domestic postpaid, or $7.25 GPO Bookstore, Stock No. 2405-0294).

The National Register of Historic Places—Supplement—1974. USDI (Available from Superintendent of Documents, US Government Printing Office, Washington, DC 20402. Price $9.45. Stock No. 2405-00542).

AR 210-20	Master Planning for Army Installations.
AR 405-80	Granting Use of Real Estate.
AR 405-90	Disposal of Real Estate.
AR 415-15	MCA Program Development.
AR 415-35	Minor Construction.
AR 420-10	General Provisions, Organization, Function and Personnel.
AR 420-70	Buildings and Structures.
AR 870-5	Military History: Responsibilities, Policies and Procedures.

Subpart I—Oil and Hazardous Substances Spill Control and Contingency Plans

GENERAL

§ 650.201 Purpose.

This chapter sets forth the procedures for the control of discharges of oil and hazardous substances under the Federal Water Pollution Control Act (FWPCA) Amendments of 1972 and as promulgated by US Environmental Protection Agency and US Coast Guard Regulations. Further guidance on hazardous and toxic materials management appears in Subpart F of this part.

§ 650.202 Goal and objectives.

The Department of the Army goal, in support of national policy, is to prevent the discharge of oil and hazardous substances and to provide for the prompt, coordinated responses to contain and clean up spills should they occur. Objectives for attaining this goal are to—

(a) Transport, store, handle, and dispose of oil, fuels, lubricant products, and hazardous liquid substances in a safe and environmentally acceptable manner.

(b) Institute a responsive alert procedure in the event of a spill and be prepared to rapidly respond in the containment and cleanup of a spill.

(c) Plan for and cooperate with other Federal, State, interstate, and local Government agencies to ensure that the public health and welfare are provided adequate protection from discharge of oils and other hazardous liquid substances.

§ 650.203 Explanation of terms.

For the purpose of this regulation and AR 500-60, the following apply—

(a) *Advisory agencies.* Departments or agencies which can make major contributions during response activities for certain types of discharges. These agencies are: The Nuclear Regulatory Commission; Department of Health, Education and Welfare; Department of Justice; Federal Disaster Assistance Administration; and Department of State.

(b) *Applicable water quality standards.* The water quality standards adopted by the State and approved by EPA pursuant to Section 303 of the Federal Water Pollution Control Act or promulgated by EPA pursuant to that section.

(c) *Coastal waters.* Generally, those US waters navigable by or to be established by deep draft vessels, the contiguous zone, the high seas, and other waters subject to tidal influence.

(d) *Contiguous zone.* The entire zone established by the United States or to be established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone. This is the zone contiguous to the territorial sea which extends 200 miles seaward from the baseline from which the territorial sea is measured.

(e) *Discharge.* Includes but is not limited to any spilling, leaking, pumping, pouring, emitting, emptying, or dumping. For the purpose of the Spill Prevention Control and Countermeasure Plan (SPCC Plan) and the Installation Spill Contingency Plan (ISCP), the term discharge will not include any discharge of oil which is authorized by a permit issued by a Federal or State authority; i.e., issued pursuant to section 13 of the River and Harbor Act of 1899 (30 Stat. 1121, 33 U.S.C. 407), or sections 402 or 405 of the FWPCA Amendments of 1972 (86 Stat. 816 et seq., 33 U.S.C. 1251 et seq.).

(f) *Discharge classifications.* The following classifications are provided for guidance and serve as criteria for reporting and general response actions. They are not meant to imply or connote associated degree of hazard to the public health or welfare, or a measure of environmental damage. A discharge that poses a substantial threat to the public health or welfare, or results in critical public concern will be classed as a major discharge, notwithstanding the following quantitative measures.

(1) *Minor discharge.* A discharge to the inland waters of less than 1000 gallons of oil, or a discharge of less than 10,000 gallons of oil to the coastal waters.

(2) *Medium discharge.* A discharge of 1,000 to 10,000 gallons of oil to the inland waters, or a discharge of 10,000 to 100,000 gallons of oil to the coastal waters, or a discharge of a hazardous substance in a harmful quantity as defined in EPA or Army regulations.

(3) *Major discharge.* A discharge of more than 10,000 gallons of oil to the inland waters, or more than 100,000 gallons of oil to the coastal waters, or a discharge of a hazardous substance that poses a substantial threat to the public health or welfare.

(g) *Hazardous substance.* An element or compound, or mixture, (other than oil) which, when discharged in any quantity onto land or into or upon navigable or coastal waters, presents an imminent and substantial danger to the public health or welfare, including fish, shellfish, wildlife, shorelines, and beaches; (e.g., hazardous substances include strong acids, strong bases, potentially toxic pesticides, or other bulk-stored chemicals used in manufacturing processes and maintenance or repair operations).

(h) *Inland waters.* Generally, those waters upstream from coastal waters.

(i) *Installation on-scene coordinator (IOSC).* The official predesignated by the Army Installation Commander to coordinate and direct Army control and cleanup efforts at the scene of an oil or hazardous substance discharge on or adjacent to an Army installation.

(j) *Installation response team (IRT).* Those collective individuals on an installation designated to act in an emergency to perform those functions directed by the IOSC.

(k) *National Response Center (NRC).* The Washington, D.C., headquarters for coordinating activities relative to pollution emergencies. It is located at Headquarters, USCG.

(l) *National Response Team (NRT).* A team of representatives from the primary and advisory agencies which serves as the national body for planning and preparedness actions prior to a pollution discharge and for coordination and advice during a pollution emergency.

(m) *Navigable waters of the United States.* "Navigable waters" as defined in section 502(7) of the FWPCA and

(1) All navigable waters of the United States, as defined in judicial decisions prior to passage of the 1972 amendments to the FWPCA (Pub. L. 92-500), and tributaries of such waters;

(2) Interstate waters;

(3) Intrastate lakes, rivers, and streams which are utilized by interstate travelers for recreational or other purposes; and

(4) Intrastate lakes, rivers, and streams from which fish or shellfish are taken and sold in interstate commerce.

(n) *Nontransportation-related onshore and offshore facilities.* Includes, but is not limited to, oil storage facilities and related equipment and appurtenances, as well as fixed bulk plant storage, terminal oil storage facilities, consumer storage, pumps, and drainage systems used in the storage of oil. These facilities include—

(1) Waste treatment facilities including in-plant pipelines, effluent discharge lines, and storage tanks, but excluding waste treatment facilities located on vessels and terminal storage tanks and appurtenances for the reception of oily ballast water or tank washings from vessels and associated systems used for offloading vessels.

(2) Loading racks, transfer hoses, loading arms and other equipment which are appurtenant to a nontransportation-related facility or terminal facility and which are used to transfer oil in bulk to or from highway vehicles or railroad cars.

(3) Highway vehicles and railroad cars which are used for the transport of oil exclusively within the confines of a nontransportation-related facility and which are not intended to transport oil in interstate or intrastate commerce.

(4) Pipeline systems which are used for the transport of oil exclusively within the confines of a nontransportation-related facility or terminal facility and which are not intended to transport oil in interstate or intrastate commerce, but excluding pipeline systems used to transfer oil in bulk to or from a vessel.

(o) *Offshore facility.* Any facility of any kind located in, on, or under any of the navigable waters of the United States, other than a vessel or public vessel.

(p) *Oil.* Oil of any kind or in any form, including but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil. The terms "oil" and "POL" are used interchangeably in this regulation.

(q) *On-scene coordinator (OSC).* The Federal official predesignated by the EPA or the USCG to coordinate and direct Federal discharge removal efforts in approved regional contingency plans at the scene of an oil or hazardous substance discharge.

(r) *Onshore facility.* Any facility located in, on, or under any land within the United States, other than submerged lands, which is not a transportation-related facility.

(s) *Person.* Includes any individual, firm, corporation, association, and patnership.

(t) *Potential discharge.* Any incident or circumstance which threatens to result in the discharge of oil or a hazardous substance.

(u) *Primary agencies.* Federal departments or agencies comprising the NRT and designated to have primary responsibility and resources to promote effective operation of the National Oil and Hazardous Substances Pollution Contingency Plan. These agencies are the Departments of Commerce, Interior, Transportation, Defense, and the Environmental Protection Agency (EPA).

(v) *Public health or welfare.* All factors affecting the health and welfare of man. They include but are not limited to, human health, the natural environment, fish, shellfish, wildlife, and public and private property, shorelines, and beaches.

(w) *Public vessel.* A vessel owned or barefoot chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce.

(x) *Regional administrator.* The Regional Administrator of the EPA, or his designee, in and for the region in which the facility is located.

(y) *Regional Response Center (RRC).* The Federal regional site for the control of pollution emergency response activities. It provides communications, information storage, and necessary personnel and facilities to promote the proper functioning and administration of regional pollution emergency response operations.

(z) *Regional Response Team (RRT).* A team of regional Federal representatives of the primary or selected advisory agencies, which acts within its region as an emergency response team performing functions similar to those of the NRT.

(aa) *Sheen.* An iridescent appearance on the surface of water.

(bb) *Sludge.* An aggregate of oil or oil and other matter of any kind having a combined specific gravity equivalent to or greater than water.

(cc) *Spill event.* A discharge of oil or hazardous substance on land or into or upon the navigable waters of the United States or adjoining shorelines in harmful quantities. For oil, a harmful quantity is that oil in excess of established State water quality standards; or that which causes a film, sheen, or discoloration on the surface of the water or adjoining shorelines; or quantities in excess of 1,000 U.S. gallons on land. For other hazardous substances, quantity guidelines will be published by DAEN-ZCE when information is developed by EPA.

(dd) *Toxic pollutant.* Those pollutants or combinations of pollutants, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction), or physical deformations in such organisms or their offspring.

(ee) *Vessel.* Every type of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, other than a public vessel.

§ 650.204 Policies.

(a) A capability will be established and maintained to respond in emergency situations to promptly contain and clean up accidental DA-caused oil discharges and spills of hazardous and toxic substances that occur at or near Army installations and activities.

(b) Assistance will be provided to contain and clean up non-DA-caused spills under the provisions of the National Oil and Hazardous Substances Pollution Contingency Plan consistent with operational commitments.

(c) All materials (including oils, fuels, petroleum products, and other hazardous chemicals) will be handled, used, and stored to avoid or minimize the possibility of an accidental spill and potential pollution of land, air, and water.

(d) Storage facilities for oil and other hazardous substances (at date described herein) will be designed to incorporate such safeguards as dikes, catchment areas, and relief vessels to contain the flow of oil and hazardous liquids and to minimize the contamination of land and water resources.

(e) DA agencies will cooperate with the Council on Environmental Quality, Department of Interior, Department of Transportation, the Environmental Protection Agency, and the Department of Commerce in the planning and execution of activities to minimize the possibility of discharges or mitigating the effects of spills, wherever they occur.

(f) Contracts for disposal of oil or other wastes will contain provisions that require the disposal method to be in accordance with Federal, State, and/or local regulations and standards.

(g) Each installation or activity with the capability of storing, dispensing or discharging oils, oil products, and bulk quantities of liquid toxic and hazardous substances will prepare, maintain and implement a current SPCC Plan and an ISCP as specified herein. (The requirements for a spill prevention plan and a spill contingency plan may be satisfied by one plan with two distinctive sections—SPCC and ISCP.)

§ 650.205 Implementing guidelines.

(a) The willful discharge of oil, petroleum products or hazardous and toxic substances from installations, vehicles, aircraft, and watercraft onto land or into waters is prohibited except in cases of extreme emergency and if considered essential for the protection of human life. Every reasonable precaution, therefore, will be taken to prevent the accidental discharge of oil or petroleum products on land or water or their vapors to the air.

(b) Oil-water separators will be installed and maintained to reduce the oil content of oil-water wastes produced from vehicle and equipment washracks, industrial processes, steam cleaning operations, etc., to levels specified by Federal, State or local standards.

(c) The discharge of ballast water from vessels will be strictly controlled either by the use of ship-board or onland oil-water separators capable of processing accumulated waste waters. Oil and fuel contaminated wastes produced during the cleaning of fuel storage tanks and combustion engine components will also be collected and treated for oil removal prior to discharge.

(d) Waste oil produced on Army installations will be collected, segregated, and protected to avoid contamination. Where cost effective, waste oil will be used as a fuel additive in large oil burning heating plants. Waste oil will not be used as a dust palliative on roads or other surfaces. If the generating installation does not have the capability to use the waste oil, it will be offered to other installations that are located within cost- effective transportation distances. If the oil cannot be cost-effectively used, it will be reported to a Defense Property Disposal Office (PDO) in the area for disposal. If disposal to PDO is economically unfeasible, installation should make arrangements with local contractors for disposal of waste products.

(e) Waste water discharges will be monitored for oil content and other toxic and hazardous substances in accordance with the provisions of the permits issued under the National Pollutant Discharge Elimination System (NPDES).

(f) DA will provide representatives to the RRT located in each of the Standard Federal Regions (figure 9-1) in accordance with § 650.206. The number of representatives may vary, depending upon the requirements in that Federal regional area and with details specified in each regional contingency plan.

(g) The RRT will be activated automatically if a major or potentially major discharge occurs. In any other pollution emergency, the RRT may also be activated upon an oral request by any Primary agency representative to the Chairperson of the RRT. Such requests for team activation will be confirmed in writing.

(h) During a major pollution discharge involving activation of the RRT, the IOSC may be directed and controlled by the EPA or USCG OSC.

(i) In the event an installation commander provides assistance on non-DA caused spills (those not covered by EPA, USCG or the National Plan) a civil support release and/or reimbursement agreement should be obtained similar to appendix A, AR 75-15. Paragraph 216011, AR 55-355, Assistance to Carriers, also provides guidance.

§ 650.206 Responsibilities.

(a) Department of the Army Staff.

(1) The Chief of Engineers will—(i) Promulgate basic policies and procedures for Department of the Army implementation of the National Oil and Hazardous Substances Pollution Contingency Plan (National Plan) for Army-caused discharges and for the preparation and implementation of SPCC and ISCP plans.

(ii) Provide technical direction, design guidance, and engineering procedures to military installations on implementation of SPCC and ISCP plans.

(iii) Provide primary and alternate members (for Civil Works) to the RRT in each of the Standard Federal Regions as required. Nominations will be provided directly to the Chairman of the RRT.

(2) Deputy Chief of Staff for Operations and Plans will exercise Army Staff supervision of DA support to the EPA and USCG in the cleanup of pollution discharges caused by other than Army agencies under the National Oil and Hazardous Substances Pollution Contingency Plan.

(3) The Inspector General and Auditor General (Army Director of Safety) will provide assistance and guidance on the safety aspects of the storage, use, handling, and disposal of hazardous and toxic substances.

(4) The Surgeon General will provide assistance and guidance on the health and environmental aspects of the storage, use, handling, and disposal of hazardous and toxic substances.

(b) Major Army commanders will—(1) Promulgate instructions for early preparation and periodic review of the ISCP for prompt identification, reporting, containment, and cleanup of accidental oil discharges and spills of hazardous and toxic substances at or near Army installations.

(2) Initiate a program for an initial survey and periodic evaluation of oil storage transfer and handling facilities for the purpose of developing an SPCC Plan for each installation.

(3) Program and budget for personnel, materials and equipment required for oil and hazardous substances spill prevention, containment and cleanup activities of DA-caused spills at Army installations.

(c) Commanding General, FORSCOM will—(1) Upon oral request, confirmed in writing by the EPA or USCG, provide personnel and resources support in accordance with the provisions of AR 500-60 during activation of the NRT and/or RRT and implementation of the National Oil and Hazardous Substances Pollution Contingency Plan. Such support is to be on a reimbursable basis.

(2) Provide primary and alternate representatives (for military matters) to the RRT for each Standard Federal Region as required. Nominations will be provided directly to the Chairman of the RRT.

(d) Installation and activity commanders will—(1) Establish SPCC plans and ISCP's and procedures to prevent spills and to ensure prompt reporting, containment, and cleanup of accidental discharges of oil and hazardous substances that occur at Army installations and nearby activities.

(2) Perform periodic surveys or inspections to verify compliance with the provisions of this regulation and to periodically test the effectiveness of SPCC Plans and ISCP's.

(3) Ensure that all fuels, oils, and hazardous materials (such as acids, bases, organic solvents, and other toxic chemicals) are used, stored and handled to avoid or minimize the possibilities of environmental pollution.

(4) Provide engineering safeguards (such as dikes, catchment areas, relief vessels) necessary to prevent pollution of navigable waters by accidental discharge of stored fuels, solvents, oils, and other chemicals.

(5) Identify in their ISCP (§ 650.214) other possible DA resources that could be made available to the RRT if DA agencies are requested to assist in the containment and/or cleanup of a non-DA caused spill in accordance with AR 500-60.

(6) When directed by CG, FORSCOM, provide available resources to support the OSC during implementation of the National Oil and Hazardous Substances Pollution Contingency Plan (AR 500-60).

(7) Inform the installation information officer and next higher informa-

tion office about the anticipated news media coverage and local public reaction to an accidental discharge of oil or hazardous substances.

(8) Program and budget for personnel, materials, equipment, and training programs required for oil and hazardous substances spill prevention, containment and cleanup of DA-caused spills.

(9) Determine, for DA-caused off-post spills in the immediate vicinity of the installation, if his military organization is within the most reasonable distance of the pollution discharge and if he has the resource capability to respond to the discharge incident. If he does not respond to the containment and cleanup of the spill, the installation commander will ensure that the RRT and appropriate DOD agencies are notified for necessary action.

(10) Ensure that all reportable spills of oil and hazardous substances are reported through channels to DAEN-ZCE and to EPA, USCG or other civil authorities (§§ 650.215—650.218).

§ 650.207 References.

See table 9-1 for related publications to be used in conjunction with this subpart.

SPILL PREVENTION CONTROL AND COUNTERMEASURE PLAN

§ 650.208 General.

Regulations have been issued by the U.S. Environmental Protection Agency (EPA), as required by the Federal Water Pollution Control Act (FWPCA) amendments of 1972, to prevent discharges of oil into the navigable waters of the United States and to contain these discharges if they do occur. These regulations require installations having certain nontransportation-related onshore and offshore oil storage facilities (as described below) to prepare, maintain, and implement a Spill Prevention Control and Countermeasure Plan (SPCC plan) to prevent and control the discharge of oil and hazardous substances before they occur.

(a) The SPCC plan will identify potential sources of oil and hazardous substances and the measures required to prevent and contain any accidental discharge resulting from equipment or storage facility failure. The SPCC plan is directed by Title 40 CFR Part 112, copies of which are available from the EPA, Washington, DC 20242 or from any EPA regional office.

(b) Army installations will prepare and implement a current SPCC plan when their oil or hazardous substance storage facilities meet any one of the following:

(1) Aggregate above-ground oil storage, at any one location on the installation, is greater than 1,320 gallons.

(2) Any single tank above-ground oil storage, at any one location on the installation, is greater than 660 gallons.

(3) Total underground oil storage, at any one location on the installation, is greater than 42,000 gallons.

(4) Single bulk storage of hazardous liquid substances (acids, chemical solvents, etc.) is greater than 500 gallons. The 500 gallon limit represents that total combined quantity of hazardous liquid substance at a single storage location on an installation.

(5) Nontransportation-related onshore and offshore facilities which, because of their location or operations, could reasonably be expected to discharge oil or hazardous material in harmful quantities into or upon the navigable waters of the United States.

(c) For purposes of an SPCC plan, the oil storage facilities will include, but not be limited to, storage for a facility such as a heating or boiler plant, electric generating unit, fuel dispensing or transfer facility, tank car or truck loading/unloading rack, bulk fuel storage, etc. An above-ground or underground oil storage facility may be a single tank or grouping of tanks in a localized area on an installation.

§ 650.209 Preparation and implementation of plan.

(a) An SPCC plan will be prepared expeditiously by each installation having oil or hazardous substances storage facilities as required in § 650.208(b), and each plan will be periodically reviewed triennially and updated as necessary.

(b) Completed plans will be fully implemented (including required construction and installation of equipment and/or training of personnel) as soon as possible after January 10, 1975. Newly activated installations will prepare an SPCC plan within 6 months after the date they begin operation and will fully implement it not later than 1 year after operations begin.

(c) An extension of time for the preparation and full implementation of an SPCC Plan beyond the times specified may be obtained from the EPA Regional Administrator. A copy of any request for an extension will be furnished through command channels to HQDA (DAEN—ZCE) Wash., DC 20310.

§ 650.210 Review and evaluation.

Each SPCC plan will be—

(a) Reviewed by a registered professional engineer (PE) and certified to have been prepared in accordance with good engineering practices, after onsite examination of the facility, and after familiarity with Title 40 CFR Part 112. This certification may be accomplished by a PE at the next higher command if no PE is available at the installation.

(b) Original and changes maintained current and reviewed by a registered professional engineer and will be made available for onsite review by the EPA regional administrator at the office of the facilities engineer. Copies of all original plans and changes will also be filed at appropriate MACOM environmental office.

(c) Reviewed and evaluated at least once every 3 years. If the review shows that more effective prevention and control technology will significantly reduce the likelihood of a spill event and if the technology has been field-proven and can be procured and installed at the time of the review, the DA component will amend the SPCC plan to include the more effective technology and have it certified by a registered professional engineer. Technological improvements should be included in Operation and Maintenance, Army or Major Construction, Army budgets as appropriate.

(d) Reviewed and amended in accordance with § 650.216, as required by the EPA Regional Administrator, whenever a facility has discharged more than 1,000 US gallons of oil into the navigable waters in a single spill event or when there have been two spill events within any 12-month period.

§ 650.211 Minimum plan requirements.

As a minimum, the SPCC plan will contain—

(a) A detailed description of the equipment and measures specified for oil spill prevention, control, and countermeasure, including structures and equipment for diversion and containment of discharges, facility drainage, and identification of resources to cleanup spills. Measures adopted should permit as far as practical reclamation of spilled substance. Many prevention and control requirements are similar to safety requirements for the design and operation of oil tanks, pipelines and pumping facilities.

(b) A description of each nontransportation-related spill event that has occurred at that facility within the past 12 months with corrective actions taken, and plans for preventing recurrence.

(c) An inventory list of storage, handling, and transfer facilities for which there is a reasonable possibility of a significant discharge of oil or other hazardous polluting substances. For each listing, where experience indicates a reasonable potential for equipment failure (e.g., tank overflow, rupture, or leakage), include a prediction of the direction, rate of flow, and total quantity of oil which could be discharged as a result of a major type of failure.

(d) A graphic description showing all containment and/or diversionary structures or equipment required to prevent discharged oil from reaching a navigable water course. Included among the various preventive measures that can be employed are: Impervious berm and dike; curbing; culverting, gutters, or other drainage systems; weirs, booms, or other barriers; spill diversion ponds; and retention ponds. If it is not practicable to install structures, sorbent materials such as straw or commercial products can be used for containment or cleanup of spills at locations specified in the plan.

(e) When it is determined that the installation of the preventative structures or equipment listed in § 650.211(d) is not practicable, the installation commander will demonstrate fully such impracticability and include the written provisions of the Installation Spill Contingency Plan (ISCP) in this section of the SPCC plan.

§ 650.212 Detailed guidance.

In addition to the minimum prevention measures (§ 650.211), sections of the SPCC plan will include a written analysis and complete discussion of conformance with applicable guidelines on other effective spill prevention and containment procedures. The guidelines are described in Title 40 CFR 112.7(e) and cover the following areas:

(a) Onshore facility diked storage drainage areas including valve restraints.

(b) Onshore bulk storage tank and dike construction material, liquid alarm systems and sensing devices.

(c) Facility transfer operations criteria for piping, valves, and inspection requirements.

(d) Facility tank car and tank truck loading/unloading rack, barriers, and warning requirements.

(e) Field storage, mobile, and portable fueling facilities such as bladders and tank trucks (See 40 CFR 112.3).

(f) Inspections and records procedures.

(g) Security fencing, pump control, pipeline connections, and lighting systems devices.

(h) Personnel, training, and spill prevention procedures.

INSTALLATION SPILL CONTINGENCY PLAN

§ 650.213 General.

A National Oil and Hazardous Substances Pollution Contingency Plan was developed in accordance with the provisions of the Federal Water Pollution Control Act (FWPCA) Amendments of 1972 (33 U.S.C. 1151 et seq.) and requires Federal agencies to develop a plan to clean up discharges of oil and hazardous substances for which they are responsible. Commanders will maintain an Installation Spill Contingency Plan (ISCP) to identify resources to be used to clean up discharges on Army installations and will be prepared to provide assistance to non-DA agencies when requested. (AR 500-60 provides policy and guidance for the DA response to the National Oil and Hazardous Substance Pollution Contingency Plan to assist EPA and the USCG in spills caused by other than DA agencies.)

(a) The ISCP will establish the responsibilities, duties, procedures, and resources to be employed, to contain and clean up accidental discharges.

(b) All Army installations will maintain a current ISCP which will be reviewed and evaluated at least once every 3 years.

(c) The resources identified for possible use by a RRT in support of the National Oil and Hazardous Substances Pollution Contingency Plan are to be specifically identified as an element of the ISCP.

(d) The ISCP will be simulated at least annually by the installation commander in coordination with the responsible officers of the SPCC Plan in order to ensure timely and effective personnel and equipment response in the event of an accidental discharge.

(e) Copies of original ISCP and any changes will be kept on file at installation facility engineer (FE) office and at MACOM environmental office.

(f) All Army installations will establish a thorough training program for oil spill response personnel.

§ 650.214 Minimum plan requirements.

As a minimum the ISCP will contain—

(a) The name, responsibilities and duties of the IOSC. The IOSC is the official predesignated by the installation commander to coordinate and direct Army control and cleanup efforts at the scene of an Army caused oil or hazardous substance discharge on or adjacent to an Army installation.

(b) The specification, composition, and training plans of the IRT which acts as an emergency response team performing response functions as defined and directed by the IOSC. A pre-planned location for an installation response operations center.

(c) IRT alert and mobilization procedures including provisions for access to a reliable communications system for timely notification of an oil or hazardous substance discharge.

(d) A current list of positions, telephone numbers, and addresses (e.g., names of key contact people in an ISCP appendix) of the responsible persons and alternates on call to receive notification of an oil or hazardous substance discharge as well as the names, telephone numbers and addresses of key organizations and agencies to be notified when a discharge is discovered.

(e) Surveillance procedures for the early detection of oil and hazardous substances discharges.

(f) Quantities and locations of manpower, equipment, vehicles, supplies, and material resources required to expeditiously contain, recover, and remove any maximum harmful quantity of oil or hazardous substance discharged by Army activities on post or at nearby Army operations. Plans will identify specific action for various size potential spills, (identified in the SPCC Plan inventory list (§ 650.211(c))), and will identify a priority list in which various critical water uses are to protected as a result of a discharge.

(g) Sources of additional resources that are available to an installation for the cleanup or reclamation of a large DA-caused spill, if such a pollution spill exceeds the response capability of the installation (e.g., resources such as U.S. Coast Guard, Air Force, Navy or private contractors). An established, prearranged procedure for requesting assistance, and agreements for acquisition of resources, during a major disaster or response exceeding situation.

(h) Procedures and techniques to be employed in identifying, containing, dispersing, reclaiming and removing oil and hazardous substances used in bulk quantity on an installation. Identification of chemicals (whose technical product data has been provided to and accepted by EPA) that may be used to concentrate, neutralize, collect, disperse and remove oil or hazardous substances discharges. Pollution control actions taken will be in accordance with applicable Federal, State, or local standards, EPA guidelines, and the current National Oil and Hazardous Substances Pollution Contingency Plan.

(i) Reporting procedures as required by §§ 650.215 and 650.216 in the event of an oil or hazardous substance discharge by Army activities.

(j) Army resources useful to the RRT in the event Army agencies are tasked to aid in the cleanup of a non-Army caused spill. Specific procedures to facilitate recovery of costs encountered during cleanup of non-Army spills are given in AR 500-60.

REPORTS OF ARMY ACCIDENTAL OIL AND HAZARDOUS SUBSTANCES DISCHARGES

§ 650.215 General.

In the event of any spill, responsive actions will be taken to prevent oil and hazardous substances from entering any navigable waters or water supplies. All personnel assigned or employed by the Department of the Army will promptly report any observed oil spill, significant discharges of hazardous and toxic substances, or evidence of a spill by discovery of a slick or sheen on water from oil, gasoline, jet fuel, or other hazardous polluting substance. Spill events will be reported immediately by telephonic means to the EPA Regional Office, U.S. Coast Guard District Office or National Response Center (800) 424-8802. On-post spill events not entering navigable waters are to be reported promptly and completely, but EPA or USCG may not require further reporting in accordance with § 650.216. Off-post incidents will be reported as above and to the nearest or appropriate political jurisdiction and to the RRT at the RRC.

§ 650.216 Pollution Incident Report (RCS EPA 1001).

(a) Medium and major spills (§ 650.203) and any discharge of more than 1,000 U.S. gallons of oil or a spill of more than 500 U.S. gallons of other hazardous liquid substance into navigable waters on or adjacent to an Army installation in the United States will be promptly reported by the IOSC by telephonic means to (800) 424-8802, or to the nearest USCG District Office, to the EPA Regional Office, and electronically through channels to HQDA (DAEN-ZCE), Wash., D.C. 20310. (See Figures 9-1 and 9-2 for regions and districts.)

(1) When it has been determined by the OSC that a spill of a hazardous substance (less than 500 gallons) is in a harmful quantity or that the discharge poses a substantial threat to the public health or welfare, it will be classed as a medium or major discharge and a Pollution Incident Report will be submitted.

(2) The format for the Pollution Incident Report is given in Table 9-2.

(3) Telephonic or electronic reports will be confirmed by a follow-up written message within 30 days after the spill to the EPA Regional Administrator, the NRT or RRT, as appropriate, and to DAEN-ZCE.

(b) When more than 1,000 U.S. gallons of oil (medium and major spills) or more than 500 U.S. gallons of a hazardous liquid substance (or any major discharge of a hazardous substance) have been discharged into or upon a navigable water in a single spill or when two spill events occur within any 12-month period, this written follow-up report will contain (in addition to the items in Table 9-2) the following:

(1) Description of facility from which spill originated (including maps, flow diagrams, and topographic maps); date facility was put into operation; storage or handling capacity; and normal daily/weekly through-put.

(2) Cause of spill, including a failure analysis of system or subsystem in which the failure occurred. Describe unique problems encountered.

(3) Post spill corrective actions, including resources committed, attempts to reclaim spilled substance and/or countermeasures taken. Include a description of equipment repairs and/or replacements.

(4) Effectiveness of response and removal actions by the discharger, State and local forces, or Federal agencies and special forces.

(5) Additional preventive measures taken or contemplated to minimize the possibility of a recurrence and recommendations to improve response actions and chances for reclaiming if a similar spill should occur.

(6) A complete copy of the SPCC plan with any amendments.

(c) Based on the above spill report information, the EPA Regional Administrator may require amendments to the SPCC plan and will notify the commander concerned by certified mail. A copy of such report will also be submitted to the State water pollution control authority.

(d) Upon discovery of a spill in which the pollutant may flow past the boundary of the installation, or a spill into navigable waters, or a spill from a vessel, the IOSC will notify the installation judge advocate's office to ensure that information, records, and samples adequate for legal purposes are obtained and safeguarded for future use.

§ 650.217 Reports on DA support provided to control non-DA spills.

Reports on the commitment of Army resources to spills, either requested by EPA or USCG, or by authority of the installation commander, in response to the provisions of the National Oil and Hazardous Substance Pollution Contingency Plan will be provided to Director of Military Support HQDA (DAMO-MS) WASH DC 20310, in accordance with the provisions of AR 500-60.

§ 650.218 Exclusions.

(a) Policies and procedures applicable to nuclear accidents and incidents as outlined in AR 360-5, AR 50-5, and AR 40-13 are not affected by this regulation.

(b) Policies and procedures applicable to chemical agent accidents and incidents as outlined in AR 50-5 and AR 385-40 are not affected by this regulation.

TABLE 9-1.—RELATED PUBLICATIONS

Council on Environmental Quality—National Oil and Hazardous Substances Pollution Contingency Plan (40 FR 28, p. 6282, February 10, 1975).

EPA—Oil Pollution Prevention, Non-Transportation-Related Onshore and Offshore Facilities (38 FR 237, p. 34164, December 11, 1973).

The Federal Water Pollution Control Act Amendments of 1972 (Title 33 U.S.C. 1251 et seq.).

River and Harbor Act of 1899 (30 Stat. 1121, 33 U.S.C. 407).

Executive Order 11752, Prevention, Control and Abatement of Environmental Pollution at Federal Facilities (38 FR 243, p. 34793).

Marine Protection, Research and Sanctuaries Act of 1972 (86 Stat. 1052).

Department of Transportation—Discharge of Oil (Title 40 U.S.C. Part 110).

Pollution Prevention, Vessel and Oil Transfer Facilities, CFR Title 33, Chapter I, Subchapter O, US Coast Guard.

AR 40-13 Radiological Emergency Medical Teams (REMT).

AR 50-5 Nuclear Surety.

AR 50-6 Chemical Surety.

AR 50-21 Chemical Accident and Incident Control (CAIC).

AR 55-355 Military Traffic Management Regulation.

AR 56-9 Watercraft.

AR 75-15 Responsibilities and Procedures for Explosive Ordinance Disposal.

AR 335-10 Army Safety Program.

AR 385-40 Accident Reporting and Records.

AR 500-60 Disaster Relief.

TB 55-1900-206-14 Control and Abatement of Pollution by Army Watercraft.

TABLE 9-2—FORMAT FOR POLLUTION INCIDENT REPORT (RCS EPA-1001)

Item	Data
1	Name and location of installation.
2	Commander of installation and his phone number.
3	Date and time (GMT) of incident or time of discovery.
4	Severity of incident. Specify size of oil discharge (major, medium, minor).
5	Location of incident and specific areas affected by spill.
6	Cause and source of incident.
7	Type and estimated amount (barrels, gallons, liters, pounds) of pollutant. If applicable, length by width of slick.
8	Samples taken (yes or no).
9	Damage impact on surroundings (fish, wildlife, and underground waters, e.g. drinking water).
10	Potential dangers (fire, explosion, toxic vapor, etc.).
11	Corrective action to eliminate pollution source.
12	Corrective action to remove pollutant.
13	Assistance required.
14	Estimated completion date of remedial actions.
15	Anticipated or actual reaction by news media and public to the incident.
16	Other items required in the regional contingency plan and a general discussion of the incident.

TABLE 9-3—ENVIRONMENTAL PROTECTION AGENCY

REGIONAL OFFICES

Environmental Protection Agency, Region I, Room 2303, John F. Kennedy Federal Building, Boston, MA 02203, Tel: (617) 223-7265.

Environmental Protection Agency, Region II, Room 908, 26 Federal Plaza, New York, NY 10007, Tel: (201) 548-8730.

Environmental Protection Agency, Region III, Curtis Bldg., 6th and Walnut Streets, Philadelphia, PA 19106, Tel: (215) 597-9898.

Environmental Protection Agency, Region IV, 345 Peachtree St., NE., Atlanta, GA. 30308, Tel: (404) 881-4062.

Environmental Protection Agency, Region V, Federal Building, 230 South Dearborn Street, Chicago, ILL 60604, Tel: (312) 896-7591.

Environmental Protection Agency, Region VI, Suite 1600, 1600 Patterson St., Dallas, TX 75201, Tel: (214) 749-3840.

Environmental Protection Agency, Region VII, 1735 Baltimore Ave., Kansas City, MO 64108, Tel: (816) 374-3778.

Environmental Protection Agency, Region VIII, Suite 900, 1860 Lincoln Street, Denver, CO 80203, Tel: (303) 837-3880.

Environmental Protection Agency, Region IX, 100 California Street, San Francisco, CA 94111, Tel: (415) 556-6254.

Environmental Protection Agency, Region X, 1200 Sixth Avenue, Seattle, WA 98101, Tel: (206) 442-4343.

Telephone numbers are 24 hour working numbers either through automatic switching or provision of answering services.

TABLE 9-4—DEPARTMENT OF TRANSPORTATION

US COAST GUARD DISTRICTS

1st Coast Guard District (I), 150 Causeway Street, Boston, MA 02114, Duty Officer: (617) 223-6650.

2nd Coast Guard District, Federal Building, 1520 Market Street, St. Louis, MO 63101, Duty Officer: (314) 622-4614.

3rd Coast Guard District (II), Governors Island, New York, NY 10004, Duty Officer: (212) 264-4800.

5th Coast Guard District (III), Federal Building, 431 Crawford Street, Portsmouth, VA 23705, Duty Officer: (703) 393-9611.

7th Coast Guard District (IV), Room 1012, 1018, Federal Bldg., 51 SW. 1st Avenue, Miami, FL 33130, Duty Officer: (305) 350-5611.

8th Coast Guard District (VI), Customhouse, New Orleans, LA 70130, Duty Officer: (504) 527-6225.

9th Coast Guard District (V), 1240 East 9th Street, Cleveland, OH 44199, Duty Officer: (216) 522-3984.

11th Coast Guard District, Heartwell Bldg., 19 Pine Avenue, Long Beach, CA 90802, Duty Officer: (213) 590-2311.

12th Coast Guard District (IX), 630 Sansome Street, San Francisco, CA 94126, Duty Officer: (415) 556-5500.

13th Coast Guard District (X), 618 2nd Avenue, Seattle, WA 98104, Duty Officer: (206) 524-2902.

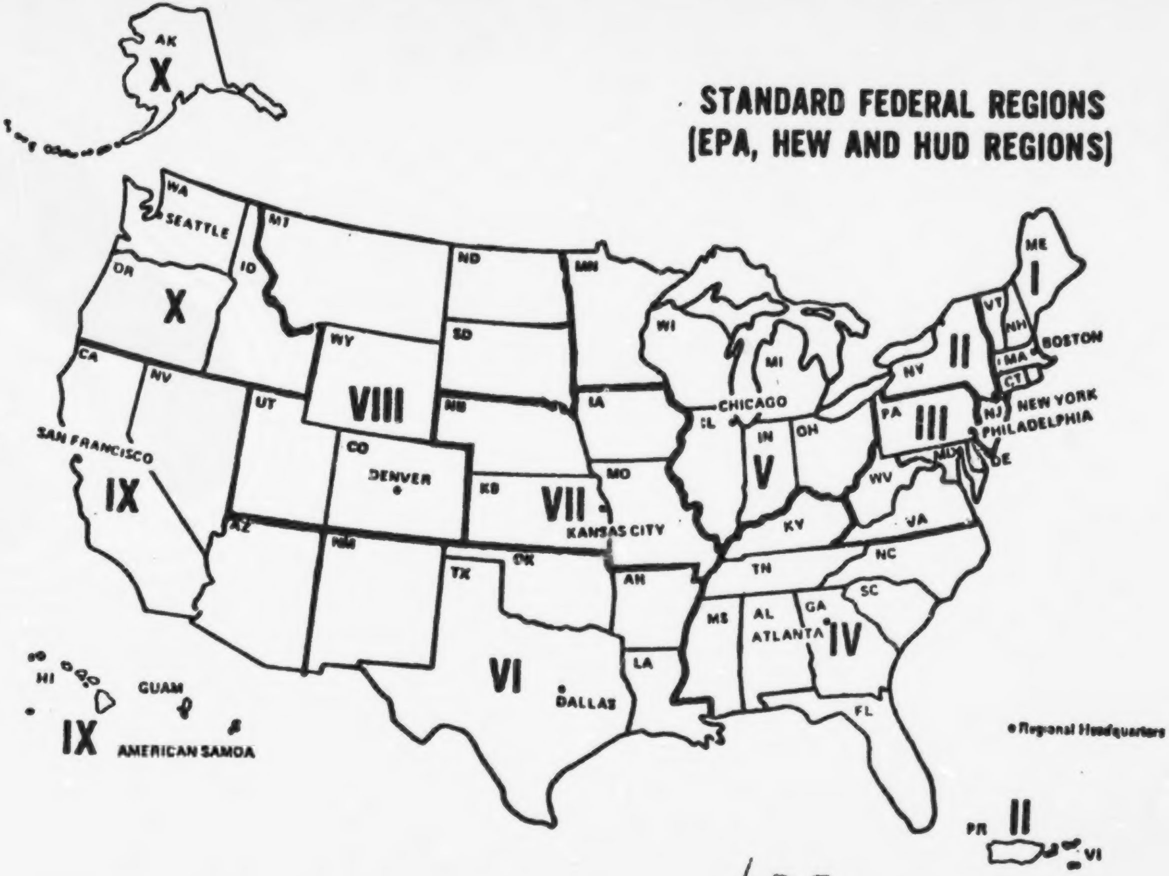
14th Coast Guard District, P.O. Box 45, FPO San Francisco, CA 96610, Duty Officer: (808) 546-7109 (Commercial only), AUTOVON—421-4845.

17th Coast Guard District, FPO Seattle, WA 98771, Duty Officer: (907) 586-7340 (Commercial only), AUTOVON—388-1121.

Telephone numbers shown are available and manned 24 hours ("") denotes district office where coastal regional Contingency Plans for standard Federal regions are available.

Figure 9-1

STANDARD FEDERAL REGIONS (EPA, HEW AND HUD REGIONS)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● Regional Headquarters

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UNITED STATES DEPARTMENT OF TRANSPORTATION
U. S. COAST GUARD DISTRICTS

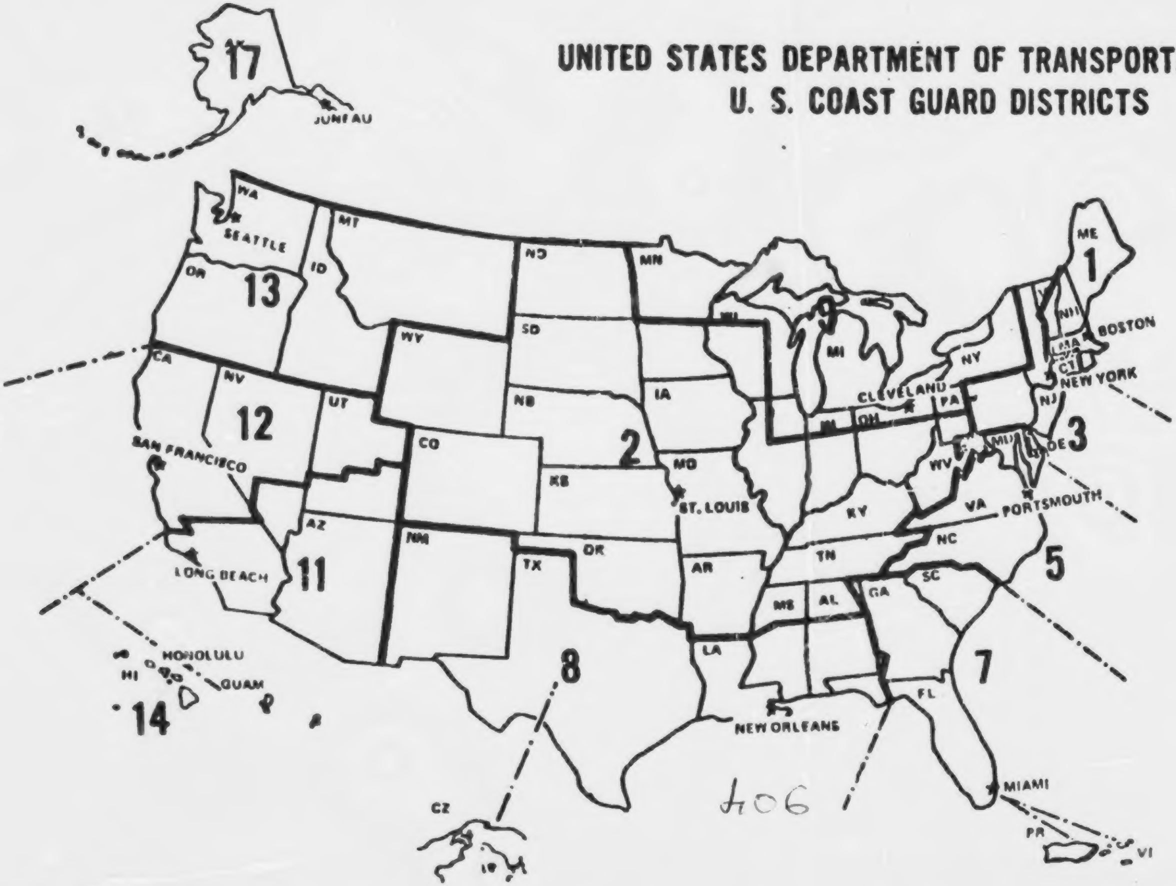
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Figure 9-2

Subpart J—Environmental Pollution Prevention, Control, and Abatement Report (RCS DD-I&L (SA) 1383)

GENERAL

§ 650.231 Purpose.

(a) This chapter provides reporting procedures to be followed within the Department of the Army to control environmental pollution from existing facilities as contained in section 3(a)(3) Executive Order 11752 of December 17, 1973, entitled, "Prevention, Control and Abatement of Environmental Pollution at Federal Facilities." This section of the Executive Order provides that "Heads of Federal agencies shall, with regard to all facilities under their jurisdiction in the United States: * * *. (3) Present to the Director of the Office of Management and Budget (OMB), annually, a plan to provide for such improvement in the design, construction, management, operation, and maintenance of existing facilities as may be necessary to meet applicable standards specified * * *."

(b) The report described herein will be the principal mechanism for identifying pollution control projects and those resources needed to effectively execute installation and major command Environmental Programs. Properly defined information presented in this report can be used as a basis for necessary programing and budget actions by DA and major commands.

(c) These instruction implement OMB Circular A-106, dated 31 Dec 74, which supersedes OMB Circular A-78 and A-81, dated 18 May 70.

§ 650.232 Explanation of terms.

(a) The terms used herein will be the same as those defined in chapter 1.

(b) The term "project" will mean an action to achieve needed corrective measures relative to identified environmental pollution sources.

(c) The term "cost" will mean the amount of funds required to install the necessary environmental protection measures. These funds include the capital costs of structures and equipment, irrespective of the appropriation chargeable, but not the annual maintenance and operating costs.

§ 650.233 Applicability.

Each active, semiactive and Army Reserve installation operated by or for the Department of the Army, and National Guard facilities/sites supported by Federally appropriated funds in the Continental United States; Alaska and Hawaii, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Panama Canal Zone, and the Trust Territories of the Pacific, whether Army-controlled or under jurisdiction of the Army by lease or similar instrument, where environmental protection measures do not meet the current requirements and/or standards established by appropriated Federal, State or local regulatory agencies are to be listed in the Environmental Pollution Control Report. Each installation identifying a new pollution source or environmental protection requirement will report through command channels in accordance with these instructions. Negative report will be rendered by responsible commands in the form of a listing of those installations where remedial measures are not needed to correct a source of pollution or where no additional resources are needed to meet the provisions of this regulation.

§ 650.234 Scope.

(a) The report described herein consists of one exhibit to be prepared at the installation or activity level and two exhibits to be prepared at the major command level. Reports are to be forwarded through channels to HQDA (DAEN-FEU) WASH, DC 20314, by November 15, and May 15, of each year. The exhibits will reflect information as of October 20, and April 20.

(b) Exhibit 1 is entitled—Proposed Project Report. Separate Exhibits will be prepared for each project or activity on an installation in each of the following categories:

(1) Air pollution.

(2) Water pollution.

(3) Solid waste pollution.

(4) Radiation pollution.

(5) Noise pollution.

(6) Pesticide and hazardous/toxic materials pollution.

(7) Environmental management.

(c) Exhibit 2 is entitled—Status Report. It indicates the amount programed, appropriated, or funded; the current working estimate (CWE); and the status of each active project. Separate exhibits will be completed by the major commands for each category or projects (i.e. air, water, noise, solid waste, etc.). After the initial report, marked-up copies of the ADP printout giving an update on all previously reported projects is all that is necessary. The ADP printout to be used for this purpose will be provided by HQDA (DAEN-FEU) WASH, DC 20314.

(d) Exhibit 3 is entitled—Narrative report. Major commands will provide a short explanation of the objectives that will be achieved, the elements of their environmental program that will be given particular emphasis over the short term, and the extent that statutory pollution control requirements and DA environmental goals and objectives will be satisfied by executing the projects or actions listed in the report. For any specific portion of the program that requires more than 12 months to complete, an identification of the major milestones for accomplishing the various actions are also to be included.

§ 650.235 Responsibilities.

(a) *Department of the Army Staff.* (1) The Chief of Engineers will compile the overall DA report based on submissions from major commands and the National Guard Bureau.

(2) The Chief, Army Reserve will monitor those reports by the major commands to ensure that Reserve installations for which they provide logistic support are included in the Pollution Control Report.

(3) The Chief, National Guard Bureau will submit a report to the Chief of Engineers including those projects for National Guard sites or installations which are supported by federally appropriated funds.

(b) *Major commands.* (1) Major commands controlling installations or activities, or providing logistical support to Reserve installations in the United States, District of Columbia, Puerto Rico, Canal Zone, Guam, American Samoa, Virgin Islands and the Trust Territories will submit reports in accordance with this regulation.

(2) Major commands controlling installations or activities in overseas areas will submit reports identifying pollution abatement projects required for compliance with host nation regulations, international or Status of Forces Agreements.

(3) Commanding General, US Army Materiel Development and Readiness Command will submit reports on retrofit projects and programs to bring mobile sources (vehicles, aircraft and watercraft) into compliance with air, water and noise standards.

INSTRUCTIONS FOR THE PREPARATION AND SUBMISSION OF EXHIBITS

§ 650.236 Exhibit 1—Proposed Project.

(a) An Exhibit 1 will be prepared and maintained current for all known pollution control projects using the format in Figure 10-1 and for valid environmental protection resource requirements using the format in Figure 10-2. Exhibit 1's previously submitted on air and water pollution control projects which are still valid, but not yet completed, do not have to be resubmitted in the new format except when a significant change takes place to make the earlier Exhibit 1 obsolete. Exhibit 1's are not required for completed projects.

(b) Exhibit 1's for new or revised projects or requirements will be submitted semi-annually by November 15, and May 15, of each year to DAEN-FEU based on the latest information as of 30 days prior to the above reporting dates.

(c) Each project will be identified as to the category of pollution control needed (i.e., air, water, solid waste, radiation, noise, pesticides, and environmental management). Projects within a category will be assigned consecutive numbers by DAEN-FEU beginning with "1." Project numbers are for permanent identification and may not be reassigned to new projects. Existing air and water pollution control projects previously numbered under RCS DD-I&L(SA) 1383 are to be continued under their originally assigned numbers. These project numbers apply strictly to this report and are not to be confused with or to replace programing line-item numbers.

(d) Each project at the same installation required for a distinct and separate purpose is to be considered a separate project. Separate projects will be reported individually using the project number assigned by DAEN-FEU.

(e) Every item in Figures 10-1 or 10-2 is to be completed for each project. Where no entry is appropriate, enter NA (Not applicable). A specific effort must be made by the installation to obtain any information not immediately on hand.

(f) The following will be reported as other relevant information:

(1) Item 10 of Exhibit 1 will include information not shown elsewhere on the exhibit which is necessary for the evaluation of the project. For example, where the command knows of changing circumstances which will affect the practicability of undertaking a project at a particular facility (e.g., replacement of a facility or a change in installation mission which would alter control needs), these changes are to be stated. If a project is discontinued, state in this item the reasons and circumstances, if any, which might lead to a re-activation of the projects (e.g., plant is put in layaway; re-activation would be based on further troop strength increase or mobilization requirements).

(2) For facilities leased by the Army which are subject to the provisions of this regulation, describe under Item 10 the lease arrangements that would affect the requirements for control measures for such facilities. Such projects will be included in Exhibit 2 with a reference in the margin to the explanation given on Exhibit 1.

(3) If a project proposed in one environmental category is likely to generate pollution of other types, Item 10 is to include a brief description and how it is to be controlled.

(4) Citations or other forms of litigation by regulatory agencies or other official entities will be reported under Item 10.

(g) Enter in Item 11, Figure 10-1 or Item 5, Figure 10-2 known or estimated funding requirements by appropriation account (OMA, MCA, etc.). (This source of project and cost data can be helpful to major commands in the development of annual budget requests to support their environmental program.)

(1) *Air*—(i) *Item 2.* Identify the pollutant(s) by name for which the project will be required (for example: Particulate matter, sulfur oxides, hydrocarbons, carbon monoxide, nitrogen oxides, etc).

(ii) *Item 3.* State the amount of pollutants emitted by each point of emission being controlled within the facility. These amounts should be measured amounts if available and expressed in the same terms of the applicable emission standard, normally State standards (e.g., lb/hr, ppm, etc.) in Item 8 at maximum process operating rate.

(iii) *Item 4.* Identify the specific emission point(s) which the project will control. This identification should be specific (e.g., two coal-fired boilers in building "xyz" rather than just "boiler").

(iv) *Item 5.* Specify the existing pollution control measures at the individual emission points. If no control measures are being utilized, so state.

(v) *Item 6.* Indicate the percentage of the pollutant which the control device removes.

(vi) *Item 7.* Indicate the type control device or process modification to be utilized to control emissions.

(vii) *Item 8.* Cite the applicable Federal, State or local air pollution emission control standard which the facility is required to meet, referencing the specific code, chapter, and part. Also, include the date the statutory requirements became effective.

(viii) *Item 9.* Indicate the project schedules proposed by the installation and that required by the statutory standards listed in Item 8. If the schedule for achieving compliance differs from statutory, regulatory, or other milestones and deadlines, indicate the dates the facility will meet them and explain why the statutory or regulatory dates will not be met. If a compliance schedule has been negotiated and accepted by the Regional EPA administrator, list those dates in lieu of those cited in a statute or regulation and indicate the date the compliance schedule was accepted.

(ix) *Items 10 & 11.* Complete according to instructions § 650.236 (a) thru (f).

(2) *Water*—(i) *Item 2.* Describes specific pollution and nature of problem, e.g., unintercepted washrack wastes containing oil and grease; overloaded sewage treatment plant bypasses raw or partly treated sewage to river; combined sewage overflow carries untreated sewage to lake, etc. Use this item and items 3, 6, and 7 as appropriate to describe infiltration inflow problems and measures required by NPDES permit and/or by "Spill Control and Countermeasure Plans" formulated pursuant to 40 CFR Part 112, "Oil Pollution Prevention," and promulgated in chapter 9 of this regulation.

(ii) *Item 3.* Show amount of waste generated and treated. Indicate gpd, tgd, or mgd.

(iii) *Item 4.* Show whether discharge is due to water (name of receiving water and location thereon), sewer system (name), land application, subsurface (e.g., septic system, drainfield, etc.).

(iv) *Item 5.* If problem as described in items 2 and 4 does not relate to an existing or proposed treatment plant, identify in this item the plant, if any, which ultimately receives, or will receive, and treats the wastewater.

(v) *Items 6 and 7.* In appropriate item, show existing and proposed ppm and/or lbs. in influent and effluent and percent removal for all principal polluting constituents. As a minimum Biochemical Oxygen Demand (BOD) (Chemical Oxygen Demand (COD), and total organic carbon (TOC) where applicable) and suspended solids data should be shown wherever possible.

(vi) *Item 8.* Cite the applicable Federal, State or local discharge standard which the facility is required to meet, referencing the specific code, chapter and part. Also include date statutory requirement became effective. Briefly summarize the discharge limitations if a NPDES permit has not been issued. When a draft or final NPDES permit has been issued, indicate:

(A) When a permit application was submitted;

(B) The application and/or permit number, and the effective and expiration dates of any permit(s) issued; and

(C) The conditions of each permit in summary form, other than the compliance dates which are to be entered in item 9.

(vii) *Item 9.* Indicate the project schedules proposed by the command and as required by the standards listed in item 8. Where issued, NPDES permit schedules should be entered in the Regulation Schedule column. If the command schedule for achieving compliance differs from the regulatory, or NPDES scheduled dates indicate the date the facility will be in compliance and explain why the required dates will not be met.

(viii) *Item 10.* Under lease construction arrangements, state who is responsible for obtaining NPDES permits or for meeting schedules and requirements.

(ix) *Item 11.* Provide funding requirements.

(3) *Solid waste*—(i) *Item 2.* Indicate the activity which is not in compliance with solid waste disposal standards; i.e., waste collection, segregation of wastes, siting or operation of sanitary landfill.

NOTE: Particular attention is to be given to controlling leachate from landfill seeping into ground or surface water sources, control of surface runoff, sanitation of waste collection and transfer systems.

(ii) *Item 3.* If specific amounts of pollution are known, list or otherwise provide best estimate.

(iii) *Item 4.* Give details of the problem; i.e., whatever it is that is not in compliance with standards.

(iv) *Item 5.* Indicate, as applicable, quantities, types, and sources of solid waste handled; frequency of operation; year of original construction/operation; design life; and estimated remaining life.

(v) *Item 6.* Discuss effectiveness of existing solid waste management system or practices, if applicable.

(vi) *Item 7.* Give brief description of proposed project which will bring operation into compliance.

(vii) *Item 8.* Specify the DA, EPA, or other solid waste management guideline applicable and the specific requirement that makes the project necessary and the effective date of the regulation.

(viii) *Items 9, 10 and 11.* Complete according to instructions § 650.236 (a) through (f)).

(4) *Radiation*—(i) *Item 2.* Identify specific type of pollutant; i.e., plutonium, cobalt 60 and other substances emitting ionizing radiations.

(ii) *Item 3.* Indicate levels of contamination (Curies or subunits, etc.)

(iii) *Item 4.* Give details of the problem.

(iv) *Item 5.* Explain current protection measures being employed, if any.

(v) *Item 6.* Discuss effectiveness of current control measures.

(vi) *Item 7.* Give brief description of proposed remedial measures.

(vii) *Item 8.* Specify NRC, EPA, or DA standards that are applicable and effective date of the regulation.

(viii) *Items 9, 10 and 11.* Complete according to instructions § 650.236 (a) through (f)).

(5) *Noise Pollution*—(i) *Item 2.* Specify the character of the noise if known or by answering the following questions:

(A) Is the noise impulsive or nonimpulsive?

(B) Is the noise on continuously or is it on-and-off intermittently?

(C) When the noise is on, is it steady in level, or does the level of loudness fluctuate?

(D) Is there a discernable tone or whine in the noise?

(ii) *Item 3.* Specify: (A) The sound level, if measured, and the measurement methodology utilized;

(B) The elevation of the noise source, and the distance from the source to the noise impacted area;

(C) Identify the facilities or areas affected including the nature of the activities affected by the noise intrusions; e.g., churches, schools, hospitals, homes, recreational areas, offices and business areas, etc., and

(D) Whether areas affected are on or off-post. Technical assistance on identification and characterization of noises should be requested from Commander, US Army Health Services Command (HSC-PA), Fort Sam Houston, TX 78234.

(iii) *Item 4.* Identify the specific course of noise pollution which requires control. Report as a minimum, those sources which have been the subject of citizen complaints.

(iv) *Item 5.* (A) Give description of existing level of noise control provided in terms of noise control management techniques such as engineering noise reduction, land use planning, or administrative procedures on controlling the source, path or receptor.

(B) State if sources of acoustic expertise were provided by an accoustical laboratory within the Army, or from commercial acoustical consultants to obtain noise level data.

(v) *Item 6.* Describe the effectiveness of existing treatment and control measures.

(vi) *Item 7.* Describe any remedial measures proposed and estimated effect in correcting the noise problem.

(vii) *Item 8.* Specify those portions and effective dates of applicable Federal, State or local noise regulations, statutes, standards to which the project responds, and the acceptable sound level permitted thereafter. If no regulations are known to apply, indicate if the nature of citizen complaints would justify some form of corrective action.

(viii) *Item 9.* Indicate the project schedules proposed to comply with standards listed in Item 8. If the schedule for achieving compliance differs from statutory or, regulatory laws, indicate the dates the requirements will be met and explain the reasons therefor.

(ix) *Item 10.* (A) Identify the complaints received on the noise source in terms of the nature and number of complaints, source of complaints (military or civilian) and how they were registered with the installation (e.g., petitions, phone calls, letters, telegrams, etc.).

(B) Indicate if any legal actions are anticipated or have been initiated against the installation as a result of this reported source of environmental noise pollution.

(x) *Item 11.* Provide funding requirements.

(6) *Pesticides and hazardous/toxic materials.* (i) Projects to be reported should involve the control and abatement of pesticide and hazardous/toxic

material pollution. Do not describe proposed and/or current programs involving the use of pesticides. Examples of pollution control projects would be measures to correct inadequate storage or disposal facilities to clean up land areas contaminated as a result of a pesticide spill, to provide mixing sinks and bathing facilities for personnel to repackage leaking chemical stock's, etc.

(ii) *Item 2.* Identify the pesticide or chemical that is the source of pollution and indicate the reason for correcting existing conditions.

(iii) *Items 3 thru 6.* Complete according to instructions (§ 650.236(a) through (f)).

(iv) *Item 7.* Describe the proposed method of disposal or nature of proposed corrective action.

(v) *Items 8 thru 11.* Complete according to instructions (§ 650.236(a) through (f)).

(7) *Environmental Management.* (i) Exhibit 1-EM (figure 10-2) will be used to identify needed resources not included in an Exhibit 1 prepared in accordance with a previous paragraph but are required to comply with the provisions of this regulation. Items to be reported are those needed for the management of an installation environmental program and can logically include:

(A) NEPA resources—Preparation of Environmental Assessments and Environmental Impact Statements.

(B) Manpower resources—Full time environmental coordinators, staff officers, instructors, etc.

(C) Training—Schooling for operators (i.e., sewage treatment plant operators, lab technicians, pesticide applicators); training for management personnel (i.e., environmental co-ordinator, sanitary engineers, etc.).

(D) Environmental surveys—Ecological or archelogical surveys of an installation to obtain information needed for an Environmental Impact Assessment or an Environmental Impact Statement (EIS or EIS).

(E) Special studies—Technical or engineering studies to define sources of pollution and identify possible remedial measures.

(F) Other—Specify.

(ii) *Item 2.* Identify the basic requirement using the identifications in paragraphs (g)(1)(i) (A) through (F) of this section.

(iii) *Item 3.* Explain the requirement and provide a brief justification for any new or additional resources needed for the management of the installation environmental program.

(iv) *Item 4.* List only those items which are quantifiable, such as number of personnel required, special equipment items, school courses, manyear requirements for studies, etc. by fiscal year.

(v) *Item 5.* Cite one-time costs or 5-year projected costs by appropriation as applicable.

(vi) *Item 6.* List other relevant information and specify. (See figure 10-9 and § 650.236(f).)

(h) Sample Exhibits—Examples of Exhibit 1's for each of the media are shown in figures 10-3 through 10-9.

§ 650.237 Exhibit 2—Status Report.

(a) Exhibit 2 is a command report which provides a financial summary of the projects in the program and their status. A separate Exhibit 2 is required for each media or category of projects (i.e., air, water, noise, solid waste, etc.) and will be submitted semi-annually along with Exhibit 1's on November 15, and May 15 of each year.

(b) Exhibit 2 will include all active projects plus those completed or discontinued subsequent to the submission of the previous report. Once a project is reported as completed or discontinued, it will be dropped from the report. The May 15 report will contain all projects which the command will submit in the next fiscal year budget. In addition, the November 15 report will reflect congressional appropriation action taken on the prior fiscal year budget.

(c) The initial Exhibit 2's for each media will be prepared by the reporting command using the format in Figure 10-10. Subsequent reports will be only an update of the previous command report. As each Exhibit 2 is received from a command, it will be converted to an ADP printout and returned to the reporting command by DAEN-FEU in 45-60 days for use in the next report update. The following updating procedures will be observed:

(1) One copy of a marked-up printout of the previous Exhibit 2 will accompany the semi-annual report.

(2) Corrections, changes and additions will be made neatly with a RED marking pen.

(3) An asterisk in the left margin will be used to identify projects which have been completed, discontinued or changed.

(4) New projects will be added to the bottom of the appropriate media printout.

(5) Exhibit 2's submitted on May 15 will contain the amount included or proposed to be included in the President's budget for each project, or the amount actually appropriated or funded.

(6) Major Command updating will be done only for non-MCA funded projects. MCA funded project status will be updated by DAEN-FEU.

(7) Each revision of Exhibit 2 will reflect the information as of October 20 and April 20, as appropriate.

(8) Funding totals by appropriation type for each fiscal year and for each media reported will be provided at the bottom of the last page.

(9) Current and relevant information will be presented in the "Status" column using the following format:

(i) Indicate "PP—" if the project is in the preliminary planning stage. The blank provided should contain the estimated completion date for construction.

(ii) Indicate "DES—" if the project is under design or has been designed, but is *not* under construction. The blank provided should contain the estimated completion date for construction and not the completion date of design.

(iii) Indicate "CON—" if the project is under construction. The blank provided should contain the estimated completion date.

(iv) Indicate "CPL—" if the project has been completed. The blank provided should contain the actual completion date.

(v) Indicate "DIS" if the project has been discontinued or dropped. Reasons should be given.

(vi) Indicate "DEF" if the project has been deferred or significantly delayed. Reasons for and what corrective actions taken, if any, should be given.

(vii) Indicate "OTH" if other than the above circumstances apply. An explanation should be given.

§ 650.238 Exhibit 3—Narrative Report.

(a) The narrative report will be a brief summary of the command environmental program. No specific format is prescribed; however, it will contain the following:

(1) Financial displays for the current FYDP period by appropriation account (MCA, PA, OMA, etc.) and by program media (air, water, noise, etc.). The elements of the program presented in the Exhibit 1-EM are to be aggregated by management activity to identify funding requirements for training, preparation of EIA/EIS, environmental surveys and studies, personnel costs, etc.

(2) An explanation of the environmental objectives to be achieved by completing the projects reported or funding those activities contained in Exhibit 1's. For any specific portion of the program that requires more than 12 months to complete, identify the major milestones for accomplishing the actions.

(3) Elements of the command program that will be given particular emphasis over the short term.

(4) Projection of when statutory pollution control requirements, Federal or state, will be satisfied by the various elements of a command.

(5) Summary of potential or pending environmental litigation involving installations within the command.

(6) Explanation of anticipated problem areas requiring DA assistance.

(b) The content of the narrative report is basically a forecast of how the major command intends to accomplish its environmental program during the succeeding 12 months. This requirement should not be confused with the requirement for the annual status report (RCS DD-I&L(A) 1269), specified in § 650.9 of Subpart A of this part of this regulation, which is an annual summary of environmental protection accomplishments for the specified preceding calendar year.

EXHIBIT 1

CIRCULAR NO. A-106

ENVIRONMENTAL POLLUTION CONTROL

Proposed Project Report

Agency:

Project No:

Media:

Date Prepared:
Date Revised:
GSA Inventory Control No.:

1. *Facility.*

Name ——————————————
Address ——————————————
(city, county, state)
Agency contact ——————————————
(name, title, telephone)

2. *Specific Type of Pollution.*

3. *Amount of Pollution.*

4. *Pollution Source, and Discharge, Emission, or Deposit Point.*

5. *Existing Treatment and Other Control Measures.*

6. *Effectiveness of Existing Treatment and Control.*

7. *Remedial Measures Proposed and Estimated Effect in Correcting Problem.*

8. *Applicable Standards.* (Cite the specific State, interstate, local, or Federal regulation and specific requirement for which the project is needed.)

9. *Project Schedule.*

	Agency schedule—month and year	Regulation schedule—month and year
Design (completion)		
Construction (start)		
Construction (completion)		
Operation (start)		
Final compliance		

10. *Other Relevant Information.*

11. *Funding Schedule.*

Figure 10-1

EXHIBIT 1-EM

ENVIRONMENTAL POLLUTION CONTROL

Proposed Management Requirement

Date Prepared:
Dated Revised:
GSA Inventory Control No.:

1. *Facility.*

Name: ——————————————
Address: ——————————————
(city, county, state)
Agency Contact: ——————————————
(name, title, telephone)

2. *Resource Identification.*

3. *Explanation and Justification of Resource Requirement.* Identify why resources, personnel and/or funds are needed for the "management" or conduct of the installation environmental program.

4. *Proposed Resource Schedule.* List by fiscal year for the period of the FYDP, when applicable.

5. *Funding.* Indicate appropriation account, amounts by fiscal year and whether amount is programed or unprogramed.

6. *Other Relevant Information.*

Figure 10-2

EXHIBIT 1

CIRCULAR NO. A-106

ENVIRONMENTAL POLLUTION CONTROL

Proposed Project Report

Agency: Department of the Army
Media: Air

Project No.: A-078C
Dated Prepared: 5/26/73
Date Revised: 2/11/74
GSA Inventory Control No.:

1. *Facility.*

Name: ABC Army Ammunition Plant.
Address: Kingstown, George County, S.C.
Agency Contact: MJR B. A. Smith Facility Engineer (615) 765-4321.

2. *Specific Type of Pollution.* NO_x

3. *Amount of Pollution.* 4,500/hr when process is operated at maximum rate.

4. *Pollution Source, and Discharge, Emission, or Deposit Point.* Nitric Acid Plant No. 13, Bldg. A.

5. *Existing Treatment and Other Control Measures.* No control measures.

6. *Effectiveness of Existing Treatment and Control.* 0% Removal efficiency.

7. *Remedial Measures Proposed and Estimated Effect in Correcting Problem.* Construct packed column control device 94% efficient to achieve full compliance.

8. *Applicable Standards.* (1) State: State Air Code, Chapter V, S113.a(ii)

(2) Region:

(3) Actual standard or exact citation: Maximum of 450/hr allowed as per the XYZ test method; effective date of emission standard is 1/31/72.

9. *Project Schedule.*

	Agency schedule—month and year	Regulation schedule—month and year
Design (completion)	4-74	4-74
Construction (start)	10-74	9-74
Construction (completion)	1-75	11-74
Final Operation (start)	6-75	5-75
Final compliance	7-75	9-75

Explanation of difference between items 8 and 9: project advanced to provide margin of safety.

10. *Other Relevant Information.* Citizens complaints received on 12/15/73. Suits initiated on 12/30/73 by Onaconda Environmental Study Group.

11. Funding.

[In thousands of dollars]

PEMA	Fiscal years				
	1976	1977	1978	1979	1980
Programed	[1] $875	0	0	0	0
Unprogramed	0	0	0	0	0

[1] Included as part of plant modernization program.

Figure 10-3

EXHIBIT 1

CIRCULAR NO. A-106

ENVIRONMENTAL POLLUTION CONTROL

Proposed Project Report

Agency: Department of the Army
Media: Water
Project No.: A-999b.
Date Prepared: 2-29-72
Date Revised: 12-26-73
GSA Inventory Control No.: 45678

1. *Facility.*
Name: Camp Faraway.
Address: Mulch City, Enny County, S.D.
Agency Contact: Col. John Smith, Facilities Engineer. (615) 755-0022.

2. *Specific Type of Pollution.* Domestic sewage, partly treated. Existing treatment plant overloaded. Excess flow bypassed to river. Influent includes small amounts (.01 mgd) of filter backwash from water treatment plant containing precipitates of alum, iron, and manganese.

3. *Amount of Pollution.* Total flow: 6.2 mgd. Treated: 4.0 mgd.

4. *Pollution Source, and Discharge, Emission, or Deposit Point.* Secondary treatment plant discharges to Obstacle River, 3 miles below Mulch City water supply intake.

5. *Existing Treatment and Other Control Measures.* Secondary—high rate trickling filter plant, final sedimentation, and chlorination. Design Capacity=4.0 mgd.

6. *Effectiveness of Existing Treatment and Control.*

Principal constituent	In parts per million		
	Influent	Treated effluent	Percent removal
BOD5	235.00	36.00	83
Suspended solids	392.00	60.00	85
Total phosphorous as P	8.98	4.67	48
Total nitrogen as N	24.96	21.14	15

7. *Remedial Measures Proposed and Estimated Effect in Correcting Problem.* Replace existing treatment plant with AWT plant: chemical/activated sludge/multimedia filtration to achieve 95 percent removals or better. Design capacity=7.5 mgd.

8. *Applicable Standards. State Standards.* SD Code: Water Poll—Chapter 61, 1960 Supp. SD Code: Public Health—Chapter 27, 1960 Supp. Water Quality Standards for Surface Waters: Reg E-1.10A (Rev.).

Federal Regulations. 40 CFR 125, 133, PL 92-500, SS 301, 313, PL 92-500, S 402-NPDES, NPDES Permit Number-SD0012345, Permit Period—1974-1979.

9. *Project Schedule.*

	Agency schedule—month and year	Regulation schedule—month and year
Design (completion)	4-75	N/A
Construction (start)	6-75	5-75
Construction (completion)	2-77	1-77
Operation (start)	4-77	N/A
Final compliance	6-77	7-77

Regulation schedule as required by NPDES permit. State water quality standard requires adequate secondary treatment by 1/74.

Unable to meet State requirement because of design problems and funding cycle. State has permitted delay on condition NPDES permit deadline is met.

10. *Other Relevant Information.* Installation may become surplus in FY 75 or FY 76 leading to project discontinuance.

Funding.

[In thousands of dollars]

MCA	Fiscal year				
	1976	1977	1978	1979	1980
Programed	0	$8,000	0	0	0
Unprogramed	0	0	0	0	0

Figure 10-4

EXHIBIT 1

CIRCULAR NO. A-106

ENVIRONMENTAL POLLUTION CONTROL

Proposed Project Report

Agency: Department of the Army.
Media: Solid Waste.

Project No.: A-001
Date Prepared: 2/11/74
Date Revised:
GSA Inventory Control No.:

1. *Facility.*
Name: Camp Faraway.
Address: Mulch City, Enny County, SD
Agency Contact: Col. John Smith, Facilities Engineer (615) 755-0022.

2. *Specific Type of Pollution.* Camp landfill.

3. *Amount of Pollution.* Leachate of high BOD concentration.

4. *Pollution Source, and Discharge, Emission, or Deposit Point.* Landfill is used for disposal of installation wastes. Due to frequent rains, wastes build up high moisture content and leachate, which emanates from side of fill. Also, area is noted to be a common breeding ground for flies and mosquitos, and is generally unsightly.

5. *Existing Treatment and Other Control Measures.* a. Landfill receives 10 tons per day of solid waste altogether, 5 from the Camp and 5 from the nearby Lindberg Air Base. It consists mainly of normal municipal-type wastes delivered on Monday, Wednesday and Friday of each week. Once a week a large load of oily rags is dumped in one corner of the landfill site.

b. Landfill was first opened in Summer of 1970 and is designed to operate until 1990.

c. Some control of run-off waters is exercised by a trench on the downhill side of landfill draining into a settling pond.

6. *Effectiveness of Existing Treatment and Control.* Trench prevents run-off waters from entering local bay waters, but does not solve vector, or aesthetic problems, nor does it minimize the amount of leachate forming.

7. *Remedial Measures Proposed and Estimated Effect in Correcting Problem.* Purchase of bulldozer to compact and cover wastes, minimize formation of leachate, control vectors, and improve general appearance. Relocate landfill to area with better drainage.

8. *Applicable Standards.* EPA Guidelines for Land Disposal of Solid Wastes, published in FEDERAL REGISTER July 1, 1974, requirements under §§ 241.204, 241.207, 241.208, 241.209, and 241.210.

9. *Project Schedule.*

	Agency schedule month and year	Agency schedule month and year
Design (completion)	N/A	N/A
Construction (start)	N/A	N/A
Construction (completion)	N/A	N/A
Begin procurement action	7-75	N/A
Operation (start)	7-76	N/A
Final compliance	7-76	N/A

10. *Other Relevant Information.* Station planning to build an incinerator in 1980 to extend life of landfill.

11. *Funding.*

[In thousands of dollars]

	Fiscal years				
	1976	1977	1978	1979	1980
PEMA:					
Programed	0	0	0	0	0
Unprogramed	$30	0	0	0	0
OMA:					
Programed engineering study	$3	0	0	0	0
Unprogramed construction new landfill	...	$10	...	...	...

Figure 10-5

EXHIBIT 1

CIRCULAR NO. A-106

ENVIRONMENTAL POLLUTION CONTROL

Proposed Project Report

Agency: Department of the Army.

Media: Radiation.

Project No.: A-001
Date Prepared:
6/14/74
Date Revised:
6/15/74
GSA Inventory Control No.:

1. *Facility.*

Name: Camp Faraway, Power Reactor.

Address: Mulch City, Enny County, S.D.

Agency Contact: Col. John Smith, Facilities Engineer (615) 755-0022.

2. *Specific Type of Pollution.* Tritium in primary water cooling system.

3. *Amount of Pollution.* Tritium concerntrates exceed new NRC, EPA and DA standards for discharge of primary coolant water.

4. *Pollution Source and Discharge, Emission or Deposit Point.* Primary coolant water discharged to holding tank and then periodically released to Lake Enny.

5. *Existing Treatment and Other Control Measure.* Holding tank before release to lake.

6. *Effectiveness of Existing Treatment and Control.* Only limited decay obtained from retention in holding tank.

7. *Remedial Measures Proposed and Estimated Effect in Correcting Problem.* Redesign holding tank system to include addition of ion exchanger.

8. *Applicable Standards and Regulations.* 10 CFR Parts 20 and 50, 40 CFR Part 190 and AR 385-80.

9. *Project Schedule.*

	Agency schedule—month and year	Agency schedule—month and year
Design (completion)	2-75	N/A
Construction (start)	5-75	N/A
Construction (completion)	7-75	N/A
Operation (start)	8-75	N/A
Final compliance	8-75	N/A

10. *Other Relevant Information.* None.

11. *Funding.*

[In thousands of dollars]

MCA	Fiscal years				
	1976	1977	1978	1979	1980
Program	$375				

Figure 10-6

Exhibit 1

CIRCULAR NO. A-106

ENVIRONMENTAL POLLUTION CONTROL

Proposed Project Report

Agency: Department of the Army
Media: Noise

Project No.: A-001
Date Prepared: 6/1/74
Date Revised:
GSA Inventory Control No.: 45678

1. *Facility.*

Name: Camp Faraway.

Address: Mulch City, Enny County, SD

Agency Contact: Col. John Smith, Facilities Engineer (615) 755-0022.

2. *Specific Type of Pollution.* Noise is broadband with discernible tones. (Noise is nonimpulsive; it is continuous at a steady in level, but with a discernible tone).

3. *Amount of Pollution.* The source measures 75 dBA at the property line. Source is 20 feet from boundary line at a height of 15 feet. Facilities or areas affected: Civilian school and housing (off the installation).

4. *Pollution Source, and Discharge, Emission, or Deposit Point.* One power plant with forced draft fans and cooling tower.

5. *Existing Treatment and Other Control Measures.* No noise control exists. Acoustic expertise-Acoustics, Inc., Chicago, IL.

6. *Effectiveness of Existing Treatment and Control.* None.

7. *Remedial Measures Proposed and Estimated Effect in Correcting Problems.* Installation of commercially available mufflers on all forced draft fans and noise enclosure on cooling tower. It is expected that this action will lower the sound level below the background noise.

8. *Applicable Standards.* Mulch Noise Ordinance, Section 4-12, Chapter 17 of the Municipal Code of Mulch, requires that the noise level at the boundary line in business and commercial districts not exceed 62 dBA.

9. *Project Schedule.*

	Agency schedule—month and year	Agency schedule—month and year
Design (completion)	9-76	N/A
Construction (start)	11-74	N/A
Construction (completion)	2-77	N/A
Operation (start)	3-77	N/A
Final compliance	4-77	N/A

The standards require immediate compliance. Agency schedule provides for earliest possible installation of control measures.

10. *Other Relevant Information.* (a) Community complaints have included 26 telephone calls, 15 letters, and 3 personal visits. Nature of complaints centered upon annoyance. (Log of noise complaints attached.)

(b) Legal action has not been initiated but may be by County School Board.

11. *Funding.*

[In thousands of dollars]

OMA	Fiscal years				
	1976	1977	1978	1979	1980
(a) Mufflers on forced draft fans:					
Programed		$25			
Unprogramed					
(b) Enclosures on cooling tower:					
Programed					
Unprogramed		$10			

Figure 10-7

EXHIBIT 1

CIRCULAR NO. A-106

ENVIRONMENTAL POLLUTION CONTROL

Proposed Project Report

Agency: Department of the Army
Media: Pesticides & Hazardous/Toxic Materials

Project No.: A-002
Date Prepared:
Sept. 15, 1974
Date Revised:———
GSA Inventory Control No.:

1. *Facility.*

Name: Camp Faraway. Address: Mulch City, Enny County, S.D.

Agency Contact: Col. John Smith, Facilities Engineer (615) 755-0022.

2. *Specific type of pollution.* The following pesticides registered for the control of pests: malathion, diazinon, chlorpyrifos, propoxur, lindane, chlordane.

3. *Amount of Pollution.* Quantities of pesticide concentrate mixed per month: Malathion, 10 gal; diazinon, 10 gal; chlorpyrifos, 7 gal; propoxur, 10 gal; lindane, 2 gal; chlordane, 10 gal.

4. *Pollution Source, and Discharge, Emission, or Deposit Point.* N/A.

5. *Existing Treatment and Other Control Measures.* Mixing sink with sump.

6. *Effectiveness of Existing Treatment and Control.* Sink too small. Inadequate neutralization and sump capacity. Requires manual bailing.

7. *Remedial Measures Proposed and Estimated Effect in Correcting Problem.* Replace small mixing sink with larger double mixing sink. Install a neutralization and holding tank with sump pump for pesticide rinses.

8. *Applicable Standards.* Executive Order 11643—Environmental Safeguards on Activities for Animal Damage Control on Federal Lands. February 8, 1972. Additionally, the EPA, under statutory authority of Section 4, Federal Insecticide, Fungicide, and Rodenticide Act, as amended by the Federal Environmental Pesticide Control Act.

9. *Project Schedule.*

	Agency schedule—month and year	Agency schedule—month and year
Design (completion)	10-75	N/A
Construction (start)	1-76	N/A
Construction (completion)	3-76	N/A
Operation (start)	4-76	N/A

10. *Other Relevant Information.* Other stocks of suspended on finally cancelled pesticides will be stored until proper disposal methods are developed. Inventory: 5 percent DDT in oil—350 gallons; 75 percent DDT wettable powder—220 lbs.

11. *Funding Schedule.*

[In thousands of dollars]

OMA	Fiscal years				
	1976	1977	1978	1979	1980
Programed	$3.0	0	0	0	0
Unprogramed	0	0	0	0	0

Figure 10-8

EXHIBIT 1-EM

ENVIRONMENTAL POLLUTION CONTROL

Proposed Management Report

Agency: Department of the Army
Media: Management

Date Prepared:
1 Oct 74
Date Revised:
GSA Inventory
Control No.:
12345

1. *Facility.*

Name: Fort Stoner.

Address: Podunk, Organ County, SD

Agency Contact: Col J. J. Jones, Facility Engineer, AV 823-1555.

2. *Resource Identification.* Training.

3. *Explanation and Justification of Resource Requirement.* Training is required for sewage treatment plant superintendent, operators and laboratory technician to meet certification standards of South Dakota. A new sewage treatment plant will be put into operation in December 1975 and trained personnel will be required to operate it. Current personnel are not familiar with the operation of the new plant and require instructions on State requirements and standards.

4. *Proposed Resource Schedule.* Training offered at University of South Dakota. Attendance at one-week courses is as follows:

[In thousands of dollars]

OMA	Fiscal years				
	1975	1976	1977	1978	1979
Superintendent					
Operator		2	2	1	1
Lab technician		1			

5. *Funding.*

[In thousands of dollars]

OMA	Fiscal years				
	1975	1976	1977	1978	1979
Programed	$0.2	$0.6			
Unprogramed			$0.4	$0.2	$0.2

6. *Other Relevant Information.* Outyear requirements reflect training for new hires.

Figure 10-9

EXHIBIT 2

POLLUTION STATUS REPORT

(media)

Agency ....

Agency contact ....

Telephone ....

Appropriation account: ———————— (OMA, MCA, etc.)

Page ——— of ———

Reporting Date ————————

Project No.	Project name and location (GSA inventory control No.)	Project costs ($1,000's)—Amount in President's budget or agency plan or amount appropriated or funded						Present cost estimate	Status
		Fiscal year −2	Fiscal year −1	Current fiscal year	Fiscal year +1	Fiscal year +2	Fiscal year +3		

NOTE: Provide totals on the last page for each appropriation account.

Figure 10-10

APPENDIX A—PROCEDURES FOR THE PROTECTION OF HISTORIC AND CULTURAL PROPERTIES

FRIDAY, JANUARY 25, 1974

WASHINGTON, D.C.

Volume 39—Number 18

PART II

See FEDERAL REGISTER 39 FR 3366-3370, January 25, 1974.

ADVISORY COUNCIL ON HISTORIC PRESERVATION PROCEDURES FOR THE PROTECTION OF HISTORIC AND CULTURAL PROPERTIES

PART 651—ENVIRONMENTAL EFFECTS OF ARMY ACTIONS (AR 200-2)

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651.2 Background.
651.3 Applicability.
651.4 Policies.
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651.6 Summary of required records and documents.
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651.19 Purpose and definition.
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651.21 Actions normally requiring an EA.
651.22 Components of the EA.
651.23 Decision process.
651.24 Public involvement.
651.25 Existing EAs.

Subpart F—Environmental Impact Statement (EIS)

Sec.
651.26 Purpose and definition.
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651.28 Actions normally requiring EISs.
651.29 Format of the EIS.
651.30 Steps in preparing and processing an EIS.
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Subpart G—Public Involvement

651.32 General procedures.
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Subpart H—Environmental Effects Abroad of Major Army Actions

651.34 General.
651.35 Purpose.
651.36 Applicability.
651.37 Definitions.
651.38 Policy.
651.39 Responsibilities.
651.40 Implementation guidance.

APPENDIX A—LIST OF CATEGORICAL EXCLUSIONS
APPENDIX B—CONTENT OF THE EIS
APPENDIX C—REGULATIONS FOR IMPLEMENTING THE PROCEDURAL PROVISIONS OF THE NATIONAL ENVIRONMENTAL POLICY ACT
APPENDIX D—IMPLEMENTING A MONITORING PROGRAM
APPENDIX E—REQUIREMENTS FOR ENVIRONMENTAL CONSIDERATIONS—GLOBAL COMMONS
APPENDIX F—REQUIREMENTS FOR ENVIRONMENTAL CONSIDERATIONS—FOREIGN NATIONS AND PROTECTED GLOBAL RESOURCES

AUTHORITY: National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 et seq., Council on Environmental Quality Regulations, 40 CFR Part 1500, 43 FR 55990—56007, Nov. 29, 1978, and EO 12114.

SOURCE: 45 FR 69215, Oct. 20, 1980, unless otherwise noted.

Subpart A—General

§ 651.1 Purpose.

This regulation states Department of the Army (DA) policy, assigns responsibilities, and establishes procedures for the integration of environmental considerations into Army planning and decisionmaking in accordance with 42 U.S.C. 4321 et. seq., "National Environmental Policy Act of 1969" (NEPA), the Council on Environmental Quality (CEQ) regulations of November 29, 1978 and Executive Order (EO) 12114, "Environmental Effects Abroad of Major Federal Actions", January 4, 1979.

[45 FR 69215, Oct. 20, 1980, as amended at 47 FR 51574, Nov. 16, 1982]

§ 651.2 Background.

(a) NEPA establishes National policies and goals for the protection of the environment. Section 102 (2) of NEPA contains certain procedural requirements directed toward the attainment of such goals. In particular, all Federal agencies are required to give appropriate pre-decisional consideration to the environmental effects of their proposed actions in their planning and decisionmaking, and to prepare detailed statements regarding recommendations or reports on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment.

(b) EO 11991, dated May 24, 1977, directed the CEQ to issue regulations to implement the procedural provisions of NEPA. Accordingly, CEQ issued final regulations for implementing NEPA's procedural provisions (40 CFR Part 1500-1508) on November 29, 1978, which became binding on all Federal agencies commencing July 30, 1979. These regulations provide that each Federal agency shall, as necessary, adopt procedures to supplement the CEQ regulations. The Department of Defense (DOD) issued its implementing procedures in DOD Directive 6050.1, "Environmental Effects in the United States of DOD Actions," on July 30, 1979.

(c) Executive Order 12114 directs that Federal agencies prepare procedures to implement the EO with respect to areas outside the United States. Accordingly, DOD issued DOD Directive 6050.7, "Environmental Effects Abroad of Major Department of Defense Actions," March 31, 1979.

§ 651.3 Applicability.

(a) Subparts A through G and Appendices A through D in this regulation apply to Headquarters, Department of the Army (HQDA) and to all Army Command, subordinate activity, and agency (hereinafter referred to as DA agencies) actions affecting the environment in the United States,[1] and are effective immediately.

(b) Subpart H and Appendices E and F of this regulation apply to HQDA and DA agencies' actions that would significantly affect the quality of the human environment outside the United States.

(c) This regulation also applies to proposals and activities of the Army National Guard which involve Federal funding and/or National Guard Bureau approval.

(d) The Civil Works functions of the Corps of Engineers are not subject to this regulation. See Corps of Engineers regulation ER 200-2-2, "Environmental Quality: Policy and Procedures for Implementing NEPA."

(e) Combat or combat-related activities in a combat zone are not subject to this regulation.

[45 FR 69215, Oct. 20, 1980, as amended at 47 FR 51574, Nov. 16, 1982]

§ 651.4 Policies.

It is the continuing policy of DA to serve as a trustee of the environment. In order to accomplish this policy, DA will:

(a) Carry out its mission of national security in a manner consistent with NEPA and other applicable standards, laws, and policies. All practicable means consistent with other essential consideration of national policy should be employed to minimize or avoid adverse environmental consequences and to attain the goals and objectives in sections 101 and 102 of NEPA. Environmental considerations will be integrated into the decisionmaking process insuring that:

---

[1] *United States* means the 50 states, the District of Columbia, territories, and possessions of the United States; and all waters and airspace subject to the territorial jurisdiction of the United States. For the purpose of this regulation, United States also includes the Commonwealth of Puerto Rico and the Commonwealth of the Northern Marianas. The territories and possessions of the United States include the Virgin Islands, American Somoa, Wake Island, Midway Island, Guam, Palmyra Island, Johnston Atoll, Navassa Island, Kingman Reef, and the Trust Territory of the Pacific Islands, subject however to future changes in their legal status. Certain environmental statutes may specify other definitions of "United States" and overseas installations may not be affected by a particular statute or regulation. Consult applicable statutes and Status of Force Agreements for guidance.

(1) Major decision points are designated for principal programs and proposals likely to have a significant effect on the quality of the human environment, and steps are taken to ensure that the NEPA process coincides with these decision points.

(2) Relevant environmental documents, comments and responses accompany the proposal through existing Army review processes so that officials use them in making decisions. The requirements of NEPA will be integrated with other planning and environmental review procedures required by law or Army practice so that environmental considerations are reviewed concurrently rather than consecutively.

(3) The alternatives considered by the decisionmaker are encompassed by the range of alternatives discussed in relevant environmental documents, and the decisionmaker considers all the alternatives described in the environmental document.

(b) Recognize the worldwide and long-range character of environmental problems and, where consistent with national security requirements and the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of the world human environment. In accordance with Executive Order 12114, DOD Directive 6050.7, and this regulation, incorporate the environmental planning and evaluation process into major Army actions which may significantly affect global commons, the environments of certain other nations, or any natural or ecological resources of global importance designated for protection.

(c) Comply with laws other than NEPA which require DA to gain approval of another Federal, state, or local government agency before commencing certain types of actions that may have environmental consequences. Compliance with such laws does not relieve the responsible official from preparing and processing necessary environmental documents. Compliance with NEPA is required unless existing law applicable to a specific action or activity prohibits, exempts or makes compliance impossible.

(d) Insure that all appropriate environmental documentation is subjected to reviews which consider operations and security (OPSEC) principles and procedures described in AR 530-1. These reviews will be documented on the cover sheet or signature page.

[45 FR 69215, Oct. 20, 1980, as amended at 47 FR 51574, Nov. 16, 1982]

§ 651.5 Responsibilities.

(a) The Assistant Secretary of the Army (Installations, Logistics and Financial Management) serves as the Secretary of the Army's responsible official for NEPA matters.

(b) The Chief of Engineers exercises primary staff responsibility for coordinating and monitoring NEPA activities within the Army. Through the Assistant Chief of Engineers (DAEN-ZCE), the Chief of Engineers is the Army staff point of contact for environmental matters and;

(1) Provides assistance and advice on the preparation/processing of environmental documentation through the identification and quantification of environmental impacts and selection of impact mitigation techniques.

(2) As necessary, designates a single agency or lead office having the responsibility for preparing and processing environmental documentation when more than one DA agency is involved and assigns DA lead agency responsibility when non-DA agencies are involved.

(3) Reviews and comments on environmental impact statements (EISs) submitted by other DOD components and other Federal agencies.

(4) Monitors proposed DA policy and program documents which have environmental implications to determine if EISs or environmental assessments (EAs) are required and to insure that environmental considerations are integrated into the decisionmaking process.

(5) Maintains liaison with the Office of Management and Budget (OMB), CEQ, Environmental Protection Agency (EPA), and other Federal, state and local agencies, with respect to their environmental policies which may affect DA, thereby assisting in the identification and evaluation of applicable regulatory policies for proposed actions.

(6) Maintains a current record of actions for which EISs have been prepared or are under preparation, and those actions of national concern for which a Finding of No Significant Impact (FNSI) has been rendered.

(7) Retains a copy of each draft and final EIS (DEIS and FEIS) prepared by DA. The EIS will be retained until the proposed action and any mitigation program is complete or the information therein is no longer valid at which time it will be deposited in the National Archives and Records Service, GSA.

(8) Directs the preparation of EISs as appropriate to insure adequate consideration of environmental impacts.

(9) Comments on EISs within those areas of assigned staff responsibility and technical capability, and

(10) Fulfills Office, Chief of Engineers (OCE) responsibilities as a DA staff agency for those actions or activities for which OCE is normally responsible as defined in Subparts A and H.

(11) Resolve issues in determining if a public hearing is appropriate for the proposed action and assign, when necessary, the responsibility for the hearing to an appropriate office.

(c) HQDA staff agencies will:

(1) Apply the policies and procedures set forth in this regulation to programs and actions within their staff responsibility.

(2) Assess proposed programs and actions to determine their environmental consequences and initiate the preparation of necessary environmental documentation. Environmental documents shall be circulated and reviewed at the same time as other planning documents such as the DD Form 1391 (Military Construction Project Data), Case Study and Justification Folder, Integrated Program Summary, feasibility, and alternative analysis studies.

(3) Coordinate appropriate environmental documents with other DA staff agencies as well as with DAEN-ZCE.

(4) Designate, record, and report the identity to DAEN-ZCE of the agency's single point of contact for NEPA considerations.

(5) Maintain a current record of staff agency actions on which EISs have been prepared, or are being prepared and those actions of national concern for which FNSIs have been prepared.

(6) As requested, assist in the review of environmental documents prepared by DOD and other DA or Federal agencies.

(7) Coordinate proposed directives, instructions, regulations and major policy publications that have environmental implications with DAEN-ZCE.

(8) [Reserved]

(9) Shall be capable, in terms of personnel and other resources, of complying with the requirements of this regulation (See 40 CFR 1507.2).

(10) Prepare and maintain Record of Decision documents for action for which they are the staff proponent.

(d) The Judge Advocate General (TJAG) will provide legal advice and assistance, as requested, in the interpretation of NEPA and the CEQ regulations, and interface with the Department of Justice on NEPA related litigation.

(e) The Comptroller of the Army (COA) will establish necessary procedures to insure compliance with the requirements for environmental exhibits and data in support of annual authorization request. Additionally, for those actions or activities for which the COA is normally responsible, the COA will fulfill the requirements defined in paragraph (c) of this section.

(f) The Surgeon General (TSG) is responsible for coordinating the environmental review related to health and welfare aspects of proposed EISs submitted to HQDA, and for preparing EAs or EISs for proposed actions and programs for which he/she is the proponent. DA agencies are encouraged to draw upon the special expertise which is available within the medical department, including the US Army Environmental Hygiene Agency, to identify and evaluate environmental impacts.

(g) [Reserved]

(h) The Chief of Public Affairs (SAPA) will:

(1) Provide guidance on the issuance of public announcements required by this regulation including NOIs, scoping procedures, and FNSI, and public involvement activities.

(2) Review proposed news releases on actions of national interest/impact.

(3) Arrange for the issuance of news releases on actions of national interest/scope to the national news media.

(i) Major field commanders are responsible for monitoring proposed actions and programs for accomplishment within their commands; and for assuring that appropriate environmental documentation is prepared and, as necessary, forwarded to HQDA.

(j) All Army commands and agencies will: (1) Establish, as necessary, internal procedures for analyzing environmental consequences of continuing and proposed actions and programs which would implement their mission and/or function and for preparing and coordinating within their technical staffs, and processing environmental documentation required for proposed actions and programs.

(2) Establish, as necessary, internal procedures to insure that proposed regulations, directives, instructions, and other major policy publications which implement their function or which implement issuances by higher headquarters, are evaluated for environmental consequences prior to publication.

(3) Maintain the capability (in terms of personnel, training, and other resources) to comply with this regulation (40 CFR 1507.2).

[45 FR 69215, Oct. 20, 1980, as amended at 47 FR 51575, Nov. 16, 1982]

Subpart B—Records and Documents

§ 651.6 Summary of required records and documents.

The following written records and documents are required in order to fully implement this regulation:

(a) Record of Environmental Consideration (REC). See Subpart C for application.

(b) List of Categorical Exclusions (CX). These are described in detail in Subpart D.

(c) Environmental Assessment (EA). See Subpart E for requirements.

(d) Finding of No Significant Impact (FNSI). See §§ 651.12(a)(4) and 651.23 for applicability and processing.

(e) Notice of Intent (NOI). See §§ 651.30 and 651.33(d)(1) for application.

(f) Environmental Impact Statement (EIS). See Subpart F for requirements.

(g) Record of Decision. See Subpart C for application.

[45 FR 69215, Oct. 20, 1980, as amended at 47 FR 51575, Nov. 16, 1982]

§ 651.7 Definitions.

(a) *List of Categorical Exclusions.* A listing of categories of actions which do not individually or cumulatively have a significant effect on the human environment. DAEN-ZCE will maintain a master list of actions for all DA agencies which normally qualify for a categorical exclusion from the requirement to prepare environmental documentation as defined in 40 CFR 1508.10. This list will include those in this regulation, Appendix A, and those nominated by DA agencies and approved by HDQA. Refer to Subpart D for further discussion.

(b) *Record of Environmental Consideration.* A Record of Environmental Consideration is a record which briefly describes the proposed action and its anticipated time frame; identifies the responsible proponent; and explains why further environmental documentation is not required. See Figure 2-1 for suggested format which contains elements of a Record of Environmental Consideration.

(c) *Reports Control Symbol.* Environmental documentation to comply with the National Environmental Policy Act or EO 12114 has been assigned reports control symbol RCS DD-M (AR) 1327.

(d) *Preparer.* The preparers are personnel from a variety of disciplines who write environmental documentation, in clear and analytical prose, who are the primary substantive reviewers of the domumentation and who are responsible for the accuracy of the document.

(e) *HQDA Staff Proponent.* The principle planner, implementer, and/or decision authority for a proposed action.

(f) *Proponent.* Since proponent identification is dependent on the nature and scope of any given action, a proponent may exist at all levels of the Army structure, e.g., the installation facility engineer becomes proponent of installation-wide MCA or O&M activity, HQ TRADOC becomes a proponent of a change in initial entry training. In general, the proponent is the lowest level decisionmaker and has the responsibility to prepare the environmental documentation because the knowledge of all aspects of the action and the ability to modify the planned actions to minimize impacts exists at this level. In the decisionmaking process, decisions are often subject to review and/or approval by higher level authorities including the HQDA staff proponent; therefore, the review/approval of the environmental document follows the same channel of review/approval as that of the proposed action.

(g) *Environmental documents.* Record of Environmental Consideration, Environmental Assessment, Environmental Impact Statement, Finding of No Significant Impact and Notice of Intent. A public record of Decisions required by 40 CFR 1505.2 but is not considered to be an environmental document because other factors are considered in the decision.

FIGURE 2-1 FORMAT FOR RECORD OF ENVIRONMENTAL CONSIDERATION [2]

RECORD OF ENVIRONMENTAL CONSIDERATION

Title:

Description of Proposed Action: (Brief description (if not obvious from title))

Anticipated Date and/or Duration of Proposed Action: (Month/year of expected action)

It has been determined that the action (choose one)

a. Is adequately covered in the existing EA ——— EIA ——— EIS ———
entitled: ————————————————
and dated ————————————

b. Qualifies for Categorical Exclusion —— appendix A, AR 200-2 and no extraordinary circumstances exist as defined in paragraph 651.16.

c. Is exempt from NEPA requirements under the provisions of (cite superseding law).

Signed ————————————————
(office responsible for proposed action)

Date: ————————————————

Concurrence: ————————————
(Installation, office, or agency designated Environmental Officer)

Date: ————————————————

[45 FR 69215, Oct. 20, 1980, as amended at 47 FR 51575, Nov. 16, 1982]

Subpart C—NEPA and the Planning Process

§ 651.8 General.

(a) The NEPA process includes the systematic examination of the possible and probable environmental consequences of implementating a proposed action. To be an effective decisionmaking tool, this process will be integrated with other Army project planning at the earliest possible time. This insures that planning and decisionmaking reflect environmental values, avoid delays later in the process, and avoid potential conflicts.

(b) To achieve these ends, NEPA requires that the Army "utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's enviornment" (Pub. L. 91-190; 102(a)(A)). This procedure enables the identification of environmental effects and values in sufficient detail so they can be evaluated in conjunction with economic, technical, and mission-related analyses.

(c) The NEPA process also requires that the proponent of an action or project identify and describe appropriate alternatives to the proposed action or project where the proposed action would involve unresolved conflicts concerning alternative uses of available resources or would significantly affect the quality of the human environment. To assist in identifying appropriate alternatives, the proponent is required to consult appropriate Federal, state and local agencies and the general public.

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[2] Variation from this format is acceptable provided basic information and approvals are included in any modified document.

(d) These procedures are designed to allow the decisionmaker to select a reasonable course of action by providing the relevant background information and subsequent analyses of positive and negative environmental effects of the proposal. The written report to the decisionmaker which contains the environmental evaluation of an action is either the Record of Environmental Consideration, EA, FNSI, or EIS.

[45 FR 69215, Oct. 20, 1980, as amended at 47 FR 51575, Nov. 16, 1982]

§ 651.9 Applicability.

(a) The types of projects or actions to be evaluated for environmental impact include:

(1) Policies, regulations, and procedures (DA regulations, circulars, or other issuances).

(2) New management and operational concepts and programs (in areas such as logistics, R&D, procurement, personnel assignment).

(3) Projects (e.g., facilities construction, weapons and vehicle research and development).

(4) Proposed new activities (e.g., individual and unit training, flight operations, etc.).

(5) Requests for a Nuclear Regulatory Commission license (new, renewal, or amendment) or an Army radiation authorization.

(b) In addition to the above, an environmental review is required for certain activities supported by the Army through:

(1) Federal contracts, grants, subsidies, loans, or other forms of funding assistance such as GOCO industrial plants.

(2) Lease, easement, permit, licenses, certificates, or other entitlements for use (e.g., grazing lease, grant of easement for highway right-of-way).

(3) Approval to use or store materials, radiation sources or wastes on Army land by non-Army entities. The responsibility to prepare environmental assessments is that of the non-Army requestor. If an EIS is required, the requestor will provide needed information for the Army preparation of the EIS. All environmental documentation will be reviewed and approved by the Army activity before initiating the request.

[45 FR 69215, Oct. 20, 1980, as amended at 47 FR 51575, Nov. 16, 1982]

§ 651.10 Categories of actions and procedures for environmental review.

(a) There are five broad categories into which a proposed action may fall for environmental review purposes. These categories are:

(1) *Exemption by Law.* The law must apply to the Department of Defense and/or DA and must prohibit, exempt or make impossible compliance with NEPA. (40 CFR 1500.6) See § 651.11 below for security exemptions.

(2) *Emergencies.* (i) In the event of an emergency, DA may be required to take immediate actions with significant environmental impact. These include actions that must be taken to promote the national defense or security and cannot be delayed, and actions necessary for the protection of life or property. The DA staff proponent shall notify OCE (DAEN-ZCE) who will then notify OASA(IL&FM) and the Assistant Secretary of Defense for Manpower, Reserve Affairs, and Logistics (ASD(MRA&L)) of an emergency action at the earliest possible time.

(ii) These modifications apply to actions necessary to control the immediate effects of the emergency; other actions remain subject to NEPA review. (40 CFR 1506.11)

(3) *Categorical Exclusions (CX) (Subpart D and App A).* These actions normally do not require an EA or an EIS because DA has determined that they do not individually or cumulatively have a significant effect on the human environment. If qualifications are met for a CX, as described in subpart D of this Part, a Record of Environmental Consideration may be required.

(4) *Actions normally requiring an EA (§§ 651.20 and 651.21).* (i) If the proposed action is covered adequately within an existing EIA (environmental impact assessment prepared under earlier guidelines), EA, or EIS, prepare a

Record of Environmental Consideration to that effect.

(ii) If the proposed action is within the general scope of an existing EIA, EA, or EIS, but additional information is required, prepare a new assessment, incorporating by reference the existing document, and publish the conclusion (FNSI or NOI).

(iii) If the proposed action is not covered in any existing adequate EIA, EA, or EIS, Or is of significantly larger scope than that described in the existing document, then prepare an EA followed by either a FNSI or a new EIS.

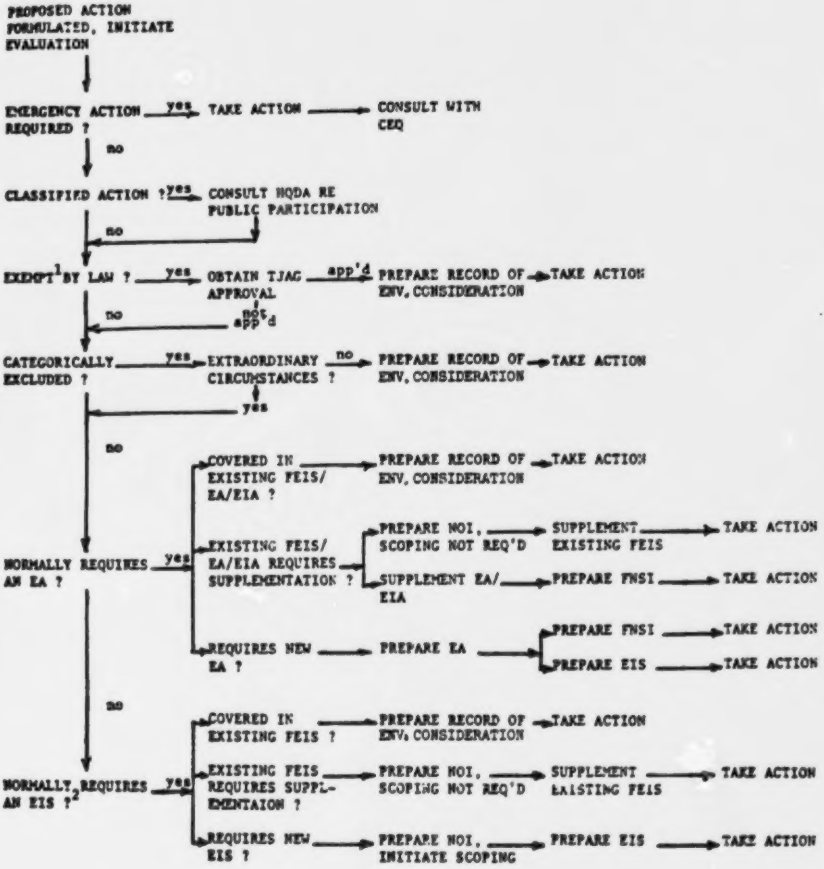
(5) *Actions Normally Requiring an EIS (§§ 651.27 and 651.28).* (i) If it is determined that the action is covered adequately in a previously filed final EIS, the Record of Environmental Consideration must so state, citing the applicable EIS by name and date; the Record of Environmental Consideration is then attached to the proponent's record copy of that final EIS.

(ii) If the proposed action is within the scope of an existing FEIS but was not covered in that document or not covered adequately, then the proponent must prepare supplemental documentation to that EIS.

(iii) If the proposed action is not within the scope of any existing EIS, then the proponent must begin the preparation of a new EIS.

(b) The flow chart shown in Figure 3-1 summarizes the process for determining documentation requirements.

(c) The proponent of a proposed action may adopt appropriate environmental documents (EAs or EISs) prepared by another agency (40 CFR 1500.4(n) and 1506.3). In such cases, the proponent will retain its own recordkeeping for Records of Environmental Consideration and Records of Decision. See 40 CFR 1506.3 for procedures to be followed when adopting other documents.


PROPOSED ACTION FORMULATED, INITIATE EVALUATION
EMERGENCY ACTION REQUIRED ?
yes
TAKE ACTION
CONSULT WITH CEQ
no
CLASSIFIED ACTION ?
yes
CONSULT HQDA RE PUBLIC PARTICIPATION
no
EXEMPT[1] BY LAW ?
yes
OBTAIN TJAG APPROVAL
app'd
PREPARE RECORD OF ENV. CONSIDERATION
TAKE ACTION
no
not app'd
CATEGORICALLY EXCLUDED ?
yes
EXTRAORDINARY CIRCUMSTANCES ?
no
PREPARE RECORD OF ENV. CONSIDERATION
TAKE ACTION
yes
no
COVERED IN EXISTING FEIS/ EA/EIA ?
PREPARE RECORD OF ENV. CONSIDERATION
TAKE ACTION
NORMALLY REQUIRES AN EA ?
yes
EXISTING FEIS/ EA/EIA REQUIRES SUPPLEMENTATION ?
PREPARE NOI, SCOPING NOT REQ'D
SUPPLEMENT EXISTING FEIS
TAKE ACTION
SUPPLEMENT EA/ EIA
PREPARE FNSI
TAKE ACTION
REQUIRES NEW EA ?
PREPARE EA
PREPARE FNSI
TAKE ACTION
PREPARE EIS
TAKE ACTION
no
NORMALLY REQUIRES AN EIS ?[2]
yes
COVERED IN EXISTING FEIS ?
PREPARE RECORD OF ENV. CONSIDERATION
TAKE ACTION
EXISTING FEIS REQUIRES SUPPLEMENTAION ?
PREPARE NOI, SCOPING NOT REQ'D
SUPPLEMENT EXISTING FEIS
TAKE ACTION
REQUIRES NEW EIS ?
PREPARE NOI, INITIATE SCOPING
PREPARE EIS
TAKE ACTION

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[1] DOD and/or DA exempts, prohibits, or makes impossible compliance. [40 CFR 1500.6]

[2] An EA may be done to help determine adequacy of previousdocuments in covering the specific new proposed action.

Summary of Types of Environmental Analyses and Required Documentation Figure 3-1

[45 FR 69215, Oct. 20, 1980, as amended at 47 FR 51576, Nov. 16, 1982]

§ 651.11 Classified actions.

(a) Limited exceptions to the procedural requirements of this regulation for proposed classified actions are covered in 40 CFR 1507.3(c). The provisions of AR 380-5 will be followed with respect to public dissemination of environmental documents containing classified information.

(b) Efforts will be made to separate classified from unclassified facts and conclusions related to the proposed action so that unclassified portions of the action may be processed routinely in accordance with this regulation, and the classified portions kept separate for use by reviewers and decisionmakers with need-to-know as defined in AR 380-5 and paragraph (c) of this section.

(c) Classification does not relieve a proponent of the necessity to assess the environmental effects of the proposed action. The HQDA staff proponent, in coordination with OCE (DAEN-ZCE) and OACSI, may select a review team from DA agency(ies) or office(s) not connected with the proponent agency, or from outside DA, in order to provide an external review of classified environmental documents.

[45 FR 69215, Oct. 20, 1980, as amended at 47 FR 51576, Nov. 16, 1982]

§ 651.12 Integration with Army planning.

It is the Army's goal that environmental reviews be integrated with and take place during other Army planning to comply with the law and the CEQ regulations and to avoid delays in mission accomplishment.

(a) It is the Army's goal that environmental considerations be integrated with and take place during other Army planning and decisionmaking actions in order to avoid delays in mission accomplishment. Environmental documents should be completed so that they may be included with any recommendation or report to the decisionmaker. The same documents should be forwarded to the planners, designers, and/or implementors so that recommendations and mitigations on which the decision was based may be carried out.

(b) *Time Limits*—(1) *Environmental Documents.* The timing of the preparation, circulation, submission, and public availability of environmental documents is of great importance in meeting the above goal, and shall be initiated as early as possible in the decisionmaking process.

(2) *Environmental Impact Statements.* (i) EPA publishes a weekly notice in the FEDERAL REGISTER of the EISs filed during the preceding week. The following time periods calculated from the publication date of the EPA notice will be observed:

(A) Not less than 45 days for public comment on draft statements (§ 1506.10(c)).

(B) Not less than 15 days for public availability of draft statements prior to any public hearing on the DEIS (40 CFR 1506.6(c)(2)).

(C) Not less than 90 days total for public availability of the EIS draft and final statements prior to any decision on the proposed action. These periods may run concurrently (40 CFR 1506.10 (b) and (c)).

(D) The time periods prescribed in paragraphs, (b)(2)(i) (A)-(C) of this section may be extended or reduced in specific instances in accordance with 40 CFR 1506.10(b)(2) and 1506.10(d).

(ii) When variations to these time limits are set, the DA agency should consider the factors in 40 CFR 1501.8(b)(1).

(iii) The proponent may also set time limits for other procedures or decisions related to draft and final EISs as listed in 40 CFR 1501.8(b)(2).

(iv) The entire EIS process could require more than one year. Most of this time is taken by the preparation of the DEIS and the revision and response to comments to prepare the FEIS. There is a minimum public review time of 90 days between the publication of the DEIS and the announcement of the record of decision. Army EISs are not normally processed in so short a time due to the internal staffing required for this type of action. After the availability of the Record of Decision is announced, the action may proceed. Figure 3-2 indicates typical and required time periods for EISs.

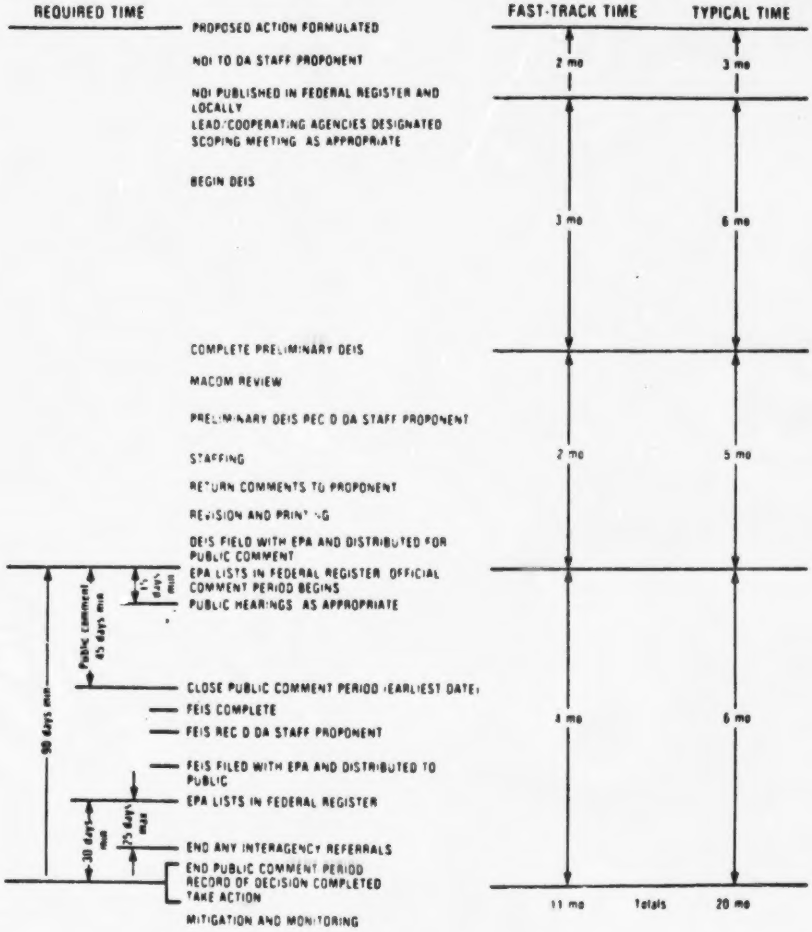
REQUIRED TIME
FAST-TRACK TIME
TYPICAL TIME
PROPOSED ACTION FORMULATED
NOI TO DA STAFF PROPONENT
2 mo
3 mo
NOI PUBLISHED IN FEDERAL REGISTER AND LOCALLY
LEAD/COOPERATING AGENCIES DESIGNATED
SCOPING MEETING AS APPROPRIATE
BEGIN DEIS
3 mo
6 mo
COMPLETE PRELIMINARY DEIS
MACOM REVIEW
PRELIMINARY DEIS REC D DA STAFF PROPONENT
STAFFING
2 mo
5 mo
RETURN COMMENTS TO PROPONENT
REVISION AND PRINTING
DEIS FILED WITH EPA AND DISTRIBUTED FOR PUBLIC COMMENT
EPA LISTS IN FEDERAL REGISTER OFFICIAL COMMENT PERIOD BEGINS
15 days min
Public comment 45 days min
PUBLIC HEARINGS AS APPROPRIATE
90 days min
CLOSE PUBLIC COMMENT PERIOD (EARLIEST DATE)
FEIS COMPLETE
4 mo
6 mo
FEIS REC D DA STAFF PROPONENT
FEIS FILED WITH EPA AND DISTRIBUTED TO PUBLIC
EPA LISTS IN FEDERAL REGISTER
30 days min
25 days max
END ANY INTERAGENCY REFERRALS
END PUBLIC COMMENT PERIOD
RECORD OF DECISION COMPLETED
TAKE ACTION
MITIGATION AND MONITORING
11 mo
Totals
20 mo

FIGURE 3-2 TIME RELATIONSHIPS FOR PREPARING AND PROCESSING AN EIS[1]

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[1] These times are not firm and fixed but rather variable on a case-by-case basis due to e g . the project or action scale data collection requirements other cooperating agencies public hearings

(3) *Categorical exclusions.* When a proposed action is categorically excluded from further environmental review (see Subpart D and App. A), the proponent may proceed immediately with the action unless a Record of Environmental Consideration (REC) is required. If the REC is required, the proponent may proceed after receiving the concurrence of the designated environmental officer for the site of the proposed action.

(4) *Findings of No Significant Impact.* (i) If the proposed action is one of national concern, is unprecedented or is one normally requiring an EIS, the proponent will make the FNSI available for at least 30 days review by the public (including state and areawide clearinghouses and in the FEDERAL REGISTER) prior to making a final decision.

(ii) Except for those proposed actions referred to in paragraph (a)(4)(i) of this section, the proponent may allow a 30-day period or other reasonable period for public comment between the time that the FNSI is publicized in accordance with 40 CFR 1506.6(b) and the time the proposed action begins. A deadline and point of contact for receipt of comments should be included in the announcement of the FNSI.

(c) *Programmatic Environmental Review (Tiering).*

(1) DA agencies are encouraged to write programmatic environmental analyses (40 CFR 1502.4(c), 1502.20 and 1508.28) in order to eliminate repetitive discussions of the same issues and focus on the key issues at each appropriate level of project review. When a broad EIS or EA has been prepared and a subsequent EIS or EA is then prepared on an action included within the entire program or policy (particularly a site-specific action), the subsequent EIS or EA need only summarize the issues discussed in the broader statement, reference it, and concentrate on the issues specific to the subsequent action. This subsequent document state where the earlier document is available.

(2) An example would be the assessment of a proposed weapon system program. An overall programmatic EIS or EA could be developed for the system; tiered EAs and EISs, as appropriate, would evaluate specific subphases such as testing, production, use and ultimate disposal.

(d) *Scoping.* (1) When the planning for an Army project or action indicates that an EIS should be prepared, the scoping process (40 CFR 1501.7) will be initiated for determining the scope of issues to be addressed and for identifying the significant issues related to the proposed action. During the scoping process the participants identify the range of actions, alternatives, and impacts to be considered in the EIS (40 CFR 1508.25). For an individual action, the scope may depend on the relationship of the proposed action to other environmental documents.

(2) The extent of the scoping process, including the appropriate degree of public involvement, will depend on such factors as the size and type of proposed action, whether the proposed action is of regional or national interest, the degree of any associated environmental controversy, the size of the affected environmental parameter(s) and the significance of any effect(s) on it (them), the extent of prior environmental review, whether any substantive time limits are involved, and whether environmental review is required by other laws.

(3) If the proponent desires to incorporate scoping in the public involvement or environmental review processes other than those required for an EIS, significant reduction in the extent of scoping incorporated is left to the proponent's discretion.

(4) Section 651.33 of this regulation discusses in detail the procedures and actions to be taken by a proponent during the scoping process for an EIS.

(e) *Documentation and Analyses.* Environmental documentation and analyses required by this regulation shall be integrated as much as practicable with other environmental review laws and executive orders (40 CFR 1502.25) and:

(1) Environmental documentation required by various state laws.

(2) Any cost-benefit analyses prepared in relation to a proposed action (40 CFR 1502.23).

(3) Permitting and licensing procedures required by Federal and state

law (e.g., the Clean Air Act, as amended (42 U.S.C. 57401 et seq.), and the Clean Water Act, as amended (33 U.S.C. 125 et seq.)).

(4) Installation and MACOM Master Planning functions and plans.

(5) Installation management plans, particularly those which deal directly with the environment (e.g., Fish and Wildlife Management Plan, Forest Management Plan, Range Improvement or Maintenance Plan, and Historic Preservation Program).

(6) Stationing and installation planning, force development planning, and materiel acquisition planning.

(f) *Relations with Local and Regional Agencies.* Installation, agency, or activity environmental officers or planners should establish close and harmonious planning relations with local and regional agencies and planning commissions of adjacent cities, countries, and states, for cooperation and resolution of mutual land use and enviornment-related problems. A Memorandum of Understanding may be prepared to identify areas of mutual interest, establish points of contact, identify lines of communication between planning bodies, and specify procedures to follow in conflict resolution. Additional coordination may be obtained from state- and area-wide planning and development "clearinghouses." These are agencies which have been established pursuant to the Office of Management and Budget (OMB) Revised Circular A-95, "Federal and Federally-assisted Programs and Projects," 38 FR 32873 (November 28, 1973). Since the A-95 Clearinghouses serve a review and coordination function for Federal activities, the proponent may gain insights on other agencies' approaches to environmental assessments, surveys, and studies in relation to any current proposal. They would also be able to assist in identifying possible participants in scoping procedures for projects requiring an EIS.

[45 FR 69215, Oct. 20, 1980, as amended at 47 FR 51576, Nov. 16, 1982]

§ 651.13 Mitigation and monitoring.

(a) *Identification in Environmental Documents.* Only those mitigation measures which can reasonably be expected to be accomplished as part of any proposed alternative shall be identified in environmental documentation (EA, FNSI, or EIS) as measures which the proponent will implement as part of the action finally selected. Other mitigation measures which appear practicable but which are not capable of accomplishment within expect resources, or which should be performed by some other agency or agencies (including non-DA agencies), shall also be identified as such in the environmental document(s). ("Practicable" measures include, but are not limited to, actions which appear capable of being accomplished even if the exact means of doing so have not been completely developed or tested.)

(b) *Consideration Throughout NEPA Process.* Mitigation will be considered throughout the NEPA process. When an EIS or EIS Supplement has been prepared, the Record of Decision will state specific mitigation measures which will be taken to reduce or avoid adverse environmental effects of the selected alternative action, as well as those practicable mitigation measures which have not been adopted (40 CFR 1505.2(c)).

(c) *Assistance From Cooperating Non-DA Agencies.* Other agencies will be requested to assist with mitigations when appropriate. Whether it is appropriate to request assistance is determined by whether the agency (1) was a cooperating agency during preparation of an environmental document, or (2) has the technology, expertise, time, funds, or familiarity with project or area necessary to implement the mitigation measure more effectively than the lead agency.

(d) *Implementing the Decision.* (1) Mitigation and other conditions established in the EIS or during its review, and committed as part of the Record of Decision, shall be implemented by the lead agency or other appropriate cooperating agency.

(2) Legal documents implenting the action (contracts, permits, grants, etc.) will specify mitigation measures to be performed. Penalties for noncompliance may also be specified as appropriate. Specification of penalties should be fully coordinated with the appropriate legal advisor.

(3) A monitoring and enforcement program shall be adopted and summarized in the Record of Decision where applicable for any mitigation. (See Appendix D for guidelines on implementing such a program.) Whether adoption of a monitoring and enforcement program is "applicable" (40 CFR 1505.2(c)) and whether the specific adopted action is an "important" case (40 CFR 1505.3) may depend on such factors as the following:

(i) A change in environmental conditions or project activities assumed in the EIS (such that original predictions of the extent of adverse environmental impacts may be too limited).

(ii) Cases in which the outcome of the mitigation measure is uncertain (e.g., new technology).

(iii) Projects in which major environmental controversy remains associated with the selected alternative.

(iv) Cases in which failure of a mitigation measure, or other unforeseen circumstances, could result in serious harm to federal or state listed endangered or threatened species; important historic or archeological sites, either in or eligible for nomination to the National Register of Historic Places; wilderness areas, wild and scenic rivers, or other public or private protected resources. The evaluation of serious harm will be made in coordination with the appropriate Federal, state or local agency responsible for each particular program.

(v) The proponent shall respond to inquiries from the public or other agencies regarding the status of mitigation measures adopted by the agency (40 CFR 1505.3(c)).

Subpart D—Categorical Exclusions

§ 651.14 Purpose and definition.

The Categorical Exclusion (CX) is intended to reduce paperwork and delay and eliminate preparation of unnecessary EA/EISs.

§ 651.15 Criteria.

The criteria used to determine those categories of actions that normally do not require either an EIS or EA are:

(a) Minimal or no individual or cumulative effect on environmental quality and

(b) No environmentally controversial change to existing environmental conditions and

(c) Similarity to actions previously examined and found to meet the above criteria.

§ 651.16 Procedures.

(a) Determine whether the proposal in encompassed by one of the categories in Appendix A not normally requiring the preparation of an EA or EIS.

(b) Determine if there are any extraordinary circumstances that may result in the proposed action having impact on the human environment which would require an EA or EIS. These circumstances might include:

(1) Greater scope or size than normally experienced for a particular category of action.

(2) Potential for degradation, even though slight, or already existing poor environmental conditions, or initiation of a degrading influence, activity, or effect in areas not already significantly modified from their natural condition.

(3) Employment of unproven technology.

(4) Presence of threatened or endangered species, archaeological remains, historical sites, or other protected resources.

(5) Use of hazardous or toxic substances which may come in contact with the surrounding environment. However, use of hazardous and toxic substances under adequately controlled conditions in established laboratories is categorically excluded.

(6) Proposed actions affecting areas of critical environmental concern such as prime or unique agricultural lands, wetlands, coastal zones, wilderness areas, floodplains, or wild and scenic river areas.

(c) If the proposed action qualifies for one of the categorical exclusions, nothing further is required unless the exclusion is identified as requiring a Record of Environmental Consideration. If the exclusion statement is followed by "(REC required)," prepare a Record of Environmental Consideration (Figure 2-1). Coordinate this document with the environmental officer before taking the action.

[45 FR 69215, Oct. 20, 1980, as amended at 47 FR 51578, Nov. 16, 1982]

§ 651.17 Categorical exclusions.

Types of actions which normally qualify for categorical exclusion are listed in Appendix A.

§ 651.18 Modification of the list of categorical exclusions.

(a) The DA list of CXs is subject to continual review and modification as changes are identified and experience is gained in the CX process. Proponents of all DA actions are encouraged to investigate and request modifications to the DA list of categorically excluded actions to HQDA (DAEN-ZCE). Subordinate headquarters are not authorized to modify the CX list through supplements to this regulation.

(b) Proposed modifications to the list of CXs will be published in the FEDERAL REGISTER by HQDA (DAEN-ZCE) in order to provide an opportunity for public review and comment.

Subpart E—Environmental Assessments (EA)

§ 651.19 Purpose and definition.

The purpose of an EA is to determine whether the proposed action requires an EIS. The EA is the examination of new proposed activities which do not normally require an EIS, are not categorically excluded from environmental examination or are not excluded from environmental review by law. The EA is defined 40 CFR 1508.9.

[45 FR 69215, Oct. 20, 1980, as amended at 47 FR 51578, Nov. 16, 1982]

§ 651.20 Criteria.

(a) Potential for measurable degradation of environmental quality.

(b) Potential for cumulative impact on environmental quality when effects are combined with those of other actions or when the action is of lengthy duration.

(c) Presence of hazardous/toxic chemicals or harmful radiation which could be released into the environment.

(d) Potential for violation of pollution abatement standards.

(e) Potential for some harm to culturally or ecologically sensitive areas.

[45 FR 69215, Oct. 20, 1980, as amended at 47 FR 51578, Nov. 16, 1982]

§ 651.21 Actions normally requiring an EA.

(a) Special field training exercise or test activity on DOD land of a level, nature, or magnitude not within the annual installation training cycle.

(b) Military Construction.

(c) [Reserved]

(d) An installation herbicide, insecticide, and rodenticide use program.

(e) Preparation of regulations, directives, manuals, or other guidance documents which have a potential for measurable impact on the environment and which are not subject to categorical exclusion.

(f) Changes to established installation land use which may be expected to have some impact on the environment.

(g) Repair or alteration projects which affect historically significant structures or areas which are either in or eligible for nomination to the National Register of Historic Places.

(h) Acquisition of or alteration of or space for a laboratory which will use dangerous or hazardous chemicals, drugs, or radioactive materials.

(i) Actions that could potentially affect prime or unique farm land, wetlands, floodplains, coastal zones, wilderness areas, wild and scenic rivers, and similar areas of critical environmental concern.

(j) New weapon systems development and acquisition.

(k) Development of significant changes to installation master plans, and land and natural resource management plans.

(l) Proposals which may lead to the excessing of Army property and are also environmentally controversial.

(m) Actions which take place in wildlife refuges.

(n) Timber management programs and/or proposals for forest harvest for energy conversion.

(o) Field activities on land not controlled by the military, including firing of weapons or missiles over navigable waters of the U.S.

(p) An action with significant local or regional effects on energy availability.

(q) An activity which affects any species which (1) is on or proposed for the U.S. Fish and Wildlife Service list of Threatened and Endangered Plant and Animal Species in accordance with the Endangered Species Act of 1973, as amended, or which (2) is on an applicable state or territorial list of threatened or endangered species.

(r) Production of hazardous or toxic materials.

[45 FR 69215, Oct. 20, 1980, as amended at 47 FR 51578, Nov. 16, 1982]

§ 651.22 Components of the EA.

(a) The EA shall include brief discussions (40 CFR 1508.9) of:

(1) Purpose and need for the proposed action.

(2) Description of the proposed action.

(3) Appropriate and reasonable alternatives considered when the proposed action concerns unresolved conflict concerning alternative uses of available resources.

(4) Environmental impact of the proposed action and any alternatives.

(5) Listing of agencies and persons consulted.

(6) The FNSI or the conclusion to prepare an EIS.

(b) The EA will indicate by signature that the appropriate decisionmaker has reviewed the document along with all other appropriate planning documents.

(c) The format for the EIS (Appendix B) may be used to facilitate EA preparation. The format may vary provided the above components are included in the EA.

[45 FR 69215, Oct. 20, 1980, as amended at 47 FR 51578, Nov. 16, 1982]

§ 651.23 Decision process.

Every EA must lead to either a FNSI or the preparation of an EIS.

(a) The FNSI is a document (40 CFR 1508.13) which briefly presents reasons why an action will not have a significant effect on the human environment and, thus, will not be the subject of an EIS. The FNSI shall contain a summary of the EA or have the EA attached, and shall reference any other environmental documents which are being or have been prepared on closely related topics. The FNSI must contain:

(1) The name of the action.

(2) A brief description of the action (including any alternatives considered).

(3) A short discussion of the anticipated environmental effects.

(4) The conclusions which have led to the FNSI.

(5) A deadline and point of contact for further information or receipt of public comments.

(b) The FNSI should normally not exceed two typewritten pages in length.

(c) The FNSI or the notice of availability of the FNSI will be made available to the affected or the potentially affected or interested public prior to initiation of the proposed action unless excluded on a security basis in accordance with § 651.11 of this regulation (40 CFR 1501.4(e)) and (40 CFR 1506.6). The FNSIs that are proposed to be published in the FEDERAL REGISTER will be submitted through command channels to the HQDA staff proponent. FNSIs having national interest/impact will be coordinated wtih SAPA-PP. Local publication of the FNSI will not precede the FR publication. The text of the publication should be identical to the FR publication.

(d) For actions of only regional or local interest, the FNSI will be publicized in accordance with 40 CFR 1506.6(b) (Appendix C). Copies of the FNSI may also be distributed to any agencies, organizations, and individuals which the proponent feels are appropriate.

[45 FR 69215, Oct. 20, 1980, as amended at 47 FR 51578, Nov. 16, 1982]

§ 651.24 Public involvement.

When considering the "extent practicable" of public interaction (40 CFR 1501.4(b)) some of the factors to be weighed are:

(a) Magnitude of the proposed project/action.

(b) Extent of anticipated public interest.

(c) Urgency of the proposal.

(d) Any relevant questions of national security classification.

§ 651.25 Existing EAs.

Existing documentation (EIA/EA) will be periodically reviewed as an action continues to insure that the setting, actions, and effects described remain substantially accurate. New environmental documentation must be prepared if substantive changes have occurred.

Subpart F—Environmental Impact Statement (EIS)

§ 651.26 Purpose and definition.

An EIS is a public document whose primary purpose (40 CFR 1502.1) is to serve to insure that the policies and goals defined in NEPA are infused into the programs and actions of Federal agencies. The EIS is required to "provide full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment" (40 CFR 1502.1).

§ 651.27 Criteria.

An EIS is normally required when the proposed action has the potential to:

(a) Significantly degrade environmental quality or public health or safety.

(b) Significantly affect historic or cultural resources, public parks and recreation areas, wildlife refuge or wilderness areas, wild and scenic rivers, sole or principal drinking water aquifers, prime and unique farm lands, wetlands, floodplains, coastal zones, or ecologically or culturally important areas or other areas of unique or critical environmental concern.

(c) Result in potentially significant and uncertain environmental effects or unique or unknown environmental risks.

(d) Significantly affect a species listed or proposed to be listed on the Federal list of endangered or threatened species.

(e) Have significant adverse effect on properties listed or eligible to be listed in the National Register of Historic Places, or the National Registry of Natual Landmarks maintained by the Heritage Conservation and Recreation Service, U.S. Department of the Interior.

(f) Either establish a precedent for future action or represent a decision in principle about a future consideration with significant environmental effects.

(g) Adversely interact with other actions with individually insignificant effects so that cumulatively significant environmental effects result.

(h) Involve the production, storage, transportation, use, and disposal of hazardous or toxic materials which have the potential to cause significant environmental impact unless a permit under the Resource Conservation and Recovery Act Regulations has been obtained.

[45 FR 69215, Oct. 20, 1980, as amended at 47 FR 51578, Nov. 16, 1982]

§ 651.28 Actions normally requiring EISs.

(a) Construction or significant expansion of a military facility, such as a depot, munitions plant, or major training installation.

(b) Construction of facilities which have a significant effect on wetlands, coastal zones, and other areas of critical environmental concern.

(c) The disposal of nuclear materials, munitions, explosives, industrial and military chemicals, and other hazardous or toxic substances which have the potential to cause significant environmental impact.

(d) The life cycle development of new weapon systems where the action will cause the construction and operation of new fixed facilities or the significant commitment of natural resources.

(e) Land acquisition, outleasing or other actions which may lead to significant change in land use.

(f) CONUS realignment of a brigade or larger TOE unit during peacetime (except where the only significant impacts are socioeconomic with no significant direct or indirect environmental impact).

(g) Closure of a major military installation (except where the only significant impacts are socioeconomic with no significant direct or indirect environmental impact).

(h) Training exercises conducted outside the boundaries of an existing military reservation where significant environmental damage might occur.

(i) Major changes in the mission of facilities affecting areas of critical environmental concern.

[45 FR 69215, Oct. 20, 1980, as amended at 47 FR 51578, Nov. 16, 1982]

§ 651.29 Format of the EIS.

(a) The format of the EIS must contain the following:

(1) Cover Sheet.

(2) Summary.

(3) Table of Contents.

(4) Purpose of and Need for the Action.

(5) Alternatives Considered.

(6) Affected Environment.

(7) Environmental and Socio-Economic Consequences.

(8) List of Preparers.

(9) Distribution List.

(10) Index.

(11) Appendices (if any).

(b) The content of each section is discussed in greater detail in Appendix B.

§ 651.30 Steps in preparing and processing an EIS.

(a) *Notice of Intent.* The NOI shall be published in the FEDERAL REGISTER and in newspapers with appropriate or general circulation in the area(s) potentially affected by the proposed action. Copies of the notice may also be distributed to agencies, organizations, and individuals as the responsible official feels is appropriate. The NOI will be forwarded to the HQDA staff proponent for FEDERAL REGISTER publication. The NOI will be coordinated with HQDA (DAEN-ZCE and SAPA-PP). Since the NOI normally initiates the scoping process adequate response time should be provided for those wishing to comment on the NOI or participate in the scoping process. Subpart G discusses public participation requirements and options.

(b) *Lead and Cooperating Agency Determination.* As soon as possible after the decision is made to prepare an EIS, the proponent office, if necessary, will contact appropriate Federal, state and local agencies to identify lead and cooperating agency responsibilities concerning EIS preparation (40 CFR 1501.5).

(c) *Scoping.* If it has been determined that DA is the lead agency, the proponent will begin the scoping process described in § 651.34. Portions of the scoping process may take place prior to publication of the NOI.

(d) *DEIS Preparation and Processing*—(1) *Preliminary DEIS.* Based on information obtained and the decisions made during the scoping process, the proponent will prepare the preliminary DEIS and forward 15 copies to the appropriate HQDA staff proponent for HQDA staff review. The preliminary DEIS will be circulated by the proponent office to OASA (IL & FM), OCE (DAEN-ZCE), OTJAG, OTSG and other interested offices for review and comment. The preliminary DEIS is then returned to the preparer for revision as required, and printing of the DEIS for filing.

(2) *DEIS.* The DA proponent will advise the preparer of the number of DEIS copies to be forwarded for final HQDA staff review, filing with EPA, and distribution to interested Congressional delegations and committees, governors, national environmental organizations, the DOD and Federal agency headquarters, and other selected entities. The DA proponent will prepare the Federal Register Notice of Availability and the EPA filing letter for the signature of the Deputy for Environment, Safety and Occupational Health, OASA (IL & FM). When the DEIS is formally approved by HQDA, the HQDA staff proponent will notify the preparer to distribute the DEIS to the remainder of the distribution list that includes Federal, regional, State and local agencies, private citizens, and local organization.

(e) *Public Review of DEIS.* (1) The length of the DEIS public comment period will normally be no less than 45 days from publication of the notice of availability in the FEDERAL REGISTER. If the statement is unusually long, a summary may be circulated with an attached list of locations where the entire DEIS may be reviewed, e.g., local public libraries, except that the EIS must be distributed to certain entities (40 CFR 1502.19).

(2) Public meetings or hearings on the DEIS will be held in accordance with the criteria established in 40 CFR 1506.6 (c) and (d) or for any other reason the proponent deems appropriate.

(f) *Response to Comments.* Responses to comments will be incorporated in the FEIS by modification of the text and/or written explanation. Where possible, comments of a similar nature will be grouped for a common response. Individual response may be made if considered desirable by the preparer or by higher authority (40 CFR 1503.4).

(g) *Prepare FEIS.* If the changes in the DEIS are limited to factual corrections, only an errata sheet containing DEIS comments, responses, and changes must be prepared and circulated; however, the entire document with new cover sheet would be filed with EPA (40 CFR 1503.4(c)). If other more extensive modifications are required, the proponent will prepare a preliminary FEIS incorporating these modifications. Processing the FEIS is the same as outlined for the DEIS transmittal except that the public need not be invited to comment during the 30 day post-filing waiting period (40 CFR 1503.1(b)).

(h) *Decision.* No decision on a proposed action shall be made until 30 days after the FEIS has been filed with EPA.

(i) *Record of Decision.* At the time of decision, or, if appropriate, its recommendation to Congress, the HQDA staff proponent will prepare a Record of Decision in accordance with 40 CFR 1505.2, and 1505.3, which will become a part of the environmental documentation presented for the final decision. A copy of the signed Record of Decision will be forwarded to HQDA (DAEN-ZCE) WASH DC 20310.

(j) *Predecision Referrals.* Procedures to resolve Federal agency disagreements on the environmental effects of a proposed action are those provided in 40 CFR Part 1504. Predecision/referrals apply to interagency disagreement concerning whether a proposed action might cause unsatisfactory effects.

(k) *Revisions and Supplement.* If at any time during the planning process for a proposed action, there are substantial changes in the proposed action relevant to environmental concerns, or significant new circumstances or information relevant to environmental concerns, the proponent office shall prepare revisions or a supplement to any environmental document and/or in other ways prepare new documentation as necessary.

(l) *Mitigation.* All measures which are planned to minimize or mitigate expected significant environmental impacts shall be identified in the EIS. Implementation of the mitigation plan is the responsibility of the proponent. The proponent will make available to the public, upon request, the status and/or results of mitigation measures associated with the proposed action.

[45 FR 69215, Oct. 20, 1980, as amended at 47 FR 51578, Nov. 16, 1982]

§ 651.31 Existing EISs.

When an existing EIS has been outmoded by extensive changes in the environmental setting, proposed action, environmental effects, or other substantive portions of the document, further supplementation is recommended. A newly proposed action must be the subject of a separate EIS. The proponent may, entirely revise the existing document in such a way as to bring it completely up to date, including the new proposal. Such a revised EIS, however, must be prepared and processed entirely under the provisions of this regulation.

§ 651.31a MACOM processing of an EIS.

In certain cases where the scope of the EIS is limited, the DA staff proponent may authorize the MACOM to process an EIS.

(a) *Notice of Intent.* When the NOI is forwarded to the DA Staff proponent in accordance with § 651.30(a), the DA Staff proponent may determine the EIS processing will be accomplished by the MACOM. The NOI will be returned with any comments by a letter authorizing the MACOM to process the EIS in accordance with the guidance in this paragraph. The MACOM is responsible for preparation of the NOI with a transmittal letter to the Office of the Federal Register and will forward both to HQDA, DAAG-AMR-R, Alexandria, VA 22331. After a review to insure the document will be accepted by the FEDERAL REGISTER, it will be forwarded by the Office of The Adjutant General.

(b) *Preliminary DEIS.* When the Preliminary DEIS is staffed at the MACOM Headquarters, copies will be provided for concurrent review to the following HQDA elements to insure that HQDA interposes no objection: DAEN-ZCE (3 copies), JALS-RL, DASG-PSP-E, SPA-PP, the DA Staff proponent, and any other office recommended by the DA staff proponent.

(c) *EIS.* The Draft and Final EIS will be filed with the EPA by forwarding five (5) copies with a transmittal letter and additional five copies will be provided for review to the EPA regional office affected by the proposed action. One (1) copy will be forwarded to OSD. HQDA copies will be the same as for the Preliminary DEIS. Copies for Congressional delegations and committees will be coordinated with HQDA(SALL) so that Congressional notification procedures are met. Remaining distribution will be to interested governors, Federal agency headquarters, national environmental organizations, regional, state and local agencies and organizations, and interested private citizens. The proponent is responsible for developing the distribution list; advice is available from HQDA (DAEN-ZCE). A Notice of Availability may be published in the FEDERAL REGISTER by forwarding the notice with a transmittal letter by the same method used for the NOI.

(d) *Record of Decision.* At the time of decision, a Record of Decision will be prepared in accordance with 40 CFR 1505.2 and 1505.3. A copy of the Record of Decision will be provided to HQDA (DAEN-ZCE).

[47 FR 51579, Nov. 16, 1982]

Subpart G—Public Involvement

§ 651.32 General procedures.

(a) The requirement (40 CFR 1506.6) for public involvement (PI) recognizes the principle that all potentially affected parties shall be consulted, whenever practicable, when developing environmental documentation. DA proponents should:

(1) Disseminate factual information about proposed actions which require environmental documentation.

(2) Coordinate proposed actions with official representatives of other government jurisdictions before formulating specific courses of action.

(3) Request constructive input from members of the unorganized and organized general public with respect to the potential scope of the environmental documentation to be prepared for a proposed action.

(4) Coordinate with the installation and MACOM public affairs officer(s) and with SAPA-PP, as appropriate.

(b) When an EIS is being prepared, PI is required (40 CFR 1501.7(a)(1)) during the scoping process.

(c) Preparation of EAs shall incorporate PI processes whenever appropriate.

(d) Persons and/or agencies to be consulted include:

(1) Municipal, township, and county elected and appointed officials.

(2) State, county, and local government officials and administrative personnel whose official duties include responsibility for activities or components of the affected environment which are believed related to the proposed Army action.

(3) Local and/or regional administrators of other Federal agencies or commissions who may either control resources which may be affected by the proposed action (e.g., Fish and Wildlife Service) or who may be aware of other actions by other Federal agencies whose effects must be considered in combination with the proposed Army action (e.g., General Services Administration).

(4) The members of identifiable population segments within the potentially affected environments, whether or not they are organized or have clearly

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identifiable leaders (e.g., farmers and ranchers, homeowners, small business owners, Indian tribes).

(5) Members and officials of those identifiable interest groups of local or national scope which may be expected to have interest in the environmental effects of the proposed action or activity (e.g., hunters and fishermen, Audubon Society).

(6) State, regional, or local A-95 clearinghouses, as appropriate.

(7) Any person or group which has specifically requested to be involved in the specific action or in actions of this general nature.

(e) The PI processes and procedures by which participation may be solicited include the following:

(1) Direct individual contact—identifies persons expected to express an opinion and participate in later PI meetings. Direct contact may also identify the preliminary positions of such persons on the scope of issues to be addressed in the EIS. Such limited contact may suffice for all PI required for actions where the expected environmental effect is of very limited scope.

(2) Small workshops or discussion groups.

(3) Larger public gatherings should normally be held after some formulation of the potential areas of focus and alternatives. The public may then be invited to express its views on the candidate courses of action and provide suggestions or alternative courses of action not already identified. These need not to be formal public hearings.

(4) Other processes and procedures to accomplish PI may be developed and applied as appropriate.

(f) The meetings described above should not be public hearings in the early stages of evaluating a proposed action. Public hearings do not substitute for the full range of PI procedures under the purposes and intent of paragraph (a) of this section.

(g) Any public surveys or polls taken to identify a range of opinion of publics which may be affected by a proposed action will be performed in accordance with AR 335-15, Chapter 10.

§ 651.33 Scoping.

(a) *Purpose.* The "scoping" process, required when an EIS will be prepared (40 CFR 1501.7), is designed to aid the proponent in determining the significant issues related to the proposed action. The process incorporates appropriate public participation as early as possible in the Army's planning for the action. EISs for proposals for legislation are not required to go through the scoping process (40 CFR 1506.8(b)(1)); however, Army policy is that these EISs go through scoping unless extenuating circumstances make it impractical.

(b) *Scoping Procedures.* Scoping procedures can be divided into preliminary, public interaction, and final phases.

(1) *Preliminary Phase.* The proponent agency or office identifies as early as possible, how it will accomplish scoping and who should be involved. Key points of this preliminary phase will be identified or briefly summarized as appropriate in the Notice(s) of Intent. The proponent will:

(i) Develop a draft scope for the EIS.

(ii) Identify the office or person(s) responsible for matters related to the scoping process. If these office(s) or person(s) are not the same as the proponent of the action, that distinction will be made.

(iii) Identify the lead and cooperating agency(ies), if they have been determined (40 CFR 1501.5-6). (See ETL 79-6, coordination with Federal and State Land Use Agencies, February 8, 1979.)

(iv) Identify the method(s) by which the agency will invite participation of affected parties. Also, the proponent may identify a tentative list of the affected parties to be notified.

(v) Identify the proposed method(s) through which the scoping procedure will be accomplished.

(vi) Indicate the relationship between the timing of the preparation of environmental analyses and the proponent's tentative planning and decision-making schedule including:

(A) The scoping process itself.

(B) Collection or analyzing environmental data, including studies required of cooperating agencies.

(C) Preparation of draft and final EISs.

(D) Filing of the Record of Decision.

(E) Taking the action.

(F) For a programmatic EIS, preparing a general expected schedule for future specific implementing actions which will involve separate environmental analysis.

(vii) If applicable, identify the extent to which the EIS preparation process for the proposed action is exempt from any of the normal procedural requirements of this regulation, including scoping.

(2) *Public Interaction Phase.* (i) During this portion of the process, the proponent will request all affected parties and respondents to the NOI to assist in development of a series of recommended issues to be addressed in detail in the EIS. Assistance in identifying possible participants may be obtained from HQDA (DAEN-ZCE) or from the environmental office of MACOM headquarters.

(ii) In addition to the affected parties as identified above, the following should be included among participants:

(A) One or more technical representatives of the proponent(s). Such persons must be able to describe for other participants the technical aspects of the proposed action and alternatives.

(B) One or more representatives of any Army-contracted consulting firm(s), if it has (they have) been retained by the time this phase occurs, and which will either actively participate in writing the EIS, or provide report(s) which the Army will directly use to create substantial portions of the EIS.

(C) Experts in various environmental areas or disciplines, if any area in which impacts may be expected is not already represented among the other scoping participants.

(iii) In all cases, the participants will be provided the information developed during the preliminary phase and with as much of the following information as may be available:

(A) A brief description of the environment(s) at the affected location(s). When (a) specific location(s) cannot be described for the particular EIS, general descriptions of the probable types of affected environment(s) may be used. The extent to which these environment(s) have been modified or affected in the past should also be included.

(B) A description of the proposed alternatives. The description will be in sufficient detail so that participants may reasonably be able to evaluate the range of impacts which may be caused by the proposed action and alternatives. The amount of detail that is "sufficient" will depend on the stage of the development of the proposal, its magnitude, and its similarity to other actions with which participants may be expected to be familiar.

(C) A tentative identification of "* * * any public environmental assessments and other environmental impact statements which are being or will be prepared that are related to but are not part of the scope of the impact statement under consideration" (40 CFR 1501.7(a)(5)).

(D) Any preliminary scoping issues or limitations on the EIS, if not already described during the preliminary phase.

(iv) The public involvement may be initiated with the NOI. In general the NOI may indicate when and where a scoping meeting will take place and whom to contact in order to receive information developed during the preliminary phase. The scoping meeting is not intended to be a formal public hearing but rather a working session where information relating to potential environmental impacts can be gathered and evaluated.

(v) Starting with the above information, the person/office conducting the scoping process will use input from the technical representative of the proponent, any cooperating agency(ies), the affected parties, and any other scoping participants to aid in developing the conclusions which become the scope of the EIS. These determinations on scope are reserved for the proponent and are detailed more fully in § 651.33(b)(3) below. However, when significant issues or factors brought out during this interactive portion of the scoping process are determined by the proponent to *not* require detailed treatment in the EIS, in spite of relevant technical or scientific objections by any participant(s) to the contrary, the proponent will clearly identify (in the Environmental Consequences section of the EIS) the criteria which it used to eliminate such issues/factors from detailed consideration.

(3) *The Final Phase.* (i) The scope used in the preparation of a draft EIS consists of the determinations made by the proponent during and after the public interaction phase of the process, as follows:

(A) The scope and the significant issues to be analyzed in depth in the EIS (40 CFR 1501.7(a)(2)). To determine the scope of EISs, the proponent will consider three types of actions, three types of alternatives, and three types of impacts, as described in 40 CFR 1508.25 (Appendix C).

(B) Identification and elimination from detailed study of the issues which are not significant or which have been covered by prior environmental review, thereby narrowing the discussion of these issues in the statement to a brief presentation of why they will not have a significant effect on the human environment, and/or providing a reference to their coverage elsewhere (40 CFR 1501.7(a)(3)).

(C) Allocation of assignments for preparation of the EIS among the lead and any cooperating agencies, with the lead agency retaining responsibility for the statement (40 CFR 1501.7(a)(4)).

(D) Indication of any public EAs and other EISs which are being or will be prepared by the Army or by another Federal agency, and which are related to, but are not part of, the scope of the impact statement under consideration (40 CFR 1501.7(a)(5)).

(E) Identification of any other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with, and integrated with, the EIS (40 CFR 1501.7(a)(6)).

(ii) As part of the scoping process the lead agency may.

(A) Set time limits, as provided in § 651.12, if they were not already indicated in the preliminary phase.

(B) prescribe overall page limits to the EIS in accordance with the CEQ regulations which emphasize conciseness.

(iii) The proponent will provide for modifying the scope during preparation of the document.

(iv) All determinations reached by the proponent during the scoping process will be clearly conveyed to the actual preparers/writers of the EIS document and will be made available to participants in the scoping process and to other interested parties on request. Any conflicts on issues of a scientific or technical nature which arise between the proponent and scoping participants, cooperating agencies, other Federal agencies, or the preparers of the document, will be identified during the scoping process, and will be resolved by the proponent in the draft EIS.

(c) *Aids to Information Gathering.* The proponent may use and/or develop graphic or other innovate methods to aid information gathering, presentation, and transfer during the three scoping phases, including methods for presenting preliminary information to scoping participants, obtaining and consolidating input from participants, and/or organizing its own determinations on scope for use during preparation of the draft EIS.

(d) *Modification of the Scoping Process.* (1) If there is a lengthy period between a decision to prepare an EIS and the time of preparation, the Notice of Intent may be published at a reasonable time in advance of preparation of the draft statement. Any tentative conclusions regarding the scope of the EIS that have been made prior to publication of the NOI must be stated in the NOI and a reasonable amount of time must be allowed for public participation before any final decisions or commitments on the scope of the EIS document are made by the proponent.

(2) The proponent of a proposed action may use scoping during preparation of environmental review documents other than an EIS, if desired. The above procedures may be used, or the proponent may develop modified procedures at his/her discretion.

[45 FR 69215, Oct. 20, 1980, as amended at 47 FR 51579, Nov. 16, 1982]

Subpart H—Environmental Effects Abroad of Major Army Actions

§ 651.3[illegible]neral.

Inclosures 1 and 2 of DOD Directive 6050.7 (Appendices E and F) pertaining to environmental effects abroad of major military actions are provided for information, guidance, and compliance.

§ 651.35 Purpose.

This chapter states DA policy, assigns responsibilities, and establishes procedures for review of environmental effects abroad of major Army actions as required by Executive Order 12114, "Enivronmental Effects Abroad of Major Federal Actions," dated January 4, 1979.

§ 651.36 Applicability.

Refer to § 651.3(b).

§ 651.37 Definitions.

(a) Foreign nation means any geographic area (land, water, and airspace) that is under the jurisdiction of one or more foreign governments; any area under military occupation by the United States alone or jointly with any other foreign government; and any area that is the responsibility of an international organization of governments. "Foreign nation" includes contiguous zones and fisheries zones of foreign nations. "Foreign government" in this context includes government regardless of whether recognized by the United States, political factions, and organizations that exercise governmental power outside the United States.

(b) Global commons are geographical areas that are outside the jurisdiction of any nation, and include the oceans outside territorial limits and Antarctica. Global commons do not include contiguous zones and fisheries zones of foreign nations.

§ 651.38 Policy.

DA agencies shall:

(a) Act with care in the global commons because the stewardship of these areas is shared by all the nations of the world and will take account of environmental considerations acting in the global commons in accordance with procedures set out in Appendix E.

(b) Act with care within the jurisdiction of a foreign nation. Treaty obligations and the sovereignty of other nations must be respected, and restraint must be exercised in applying United States laws within foreign nations unless Congress has expressly provided otherwise. DA will take account of environmental considerations in accordance with Appendix F when the proposed action could affect the environment of a foreign nation.

(c) Coordinate with the Department of State on formal communications with foreign governments concerning environmental agreements and other formal arrangements with foreign governments. Consult with the Department of State in connection with the utilization of additional exemptions from this directive as specified in paragraph C.3.b of inclosure 2. Coordinate and consult with the Department of State through the Assistant Secretary of Defense (International Security Affairs).

§ 651.39 Responsibilities.

(a) DA agencies that control actions abroad (as defined by this regulation) will:

(1) Insure that regulations and other major policy issuances are reviewed for consistency with Executive Order 12114, DOD Directive 6050.7, and this regulation.

(2) Consult with HQDA (DAMO-SSM) on signficant or sensitive actions or decisions affecting relations with other nations.

(b) The ASA (IL&FM):

(1) Serves as the Secretary of the Army's responsible official for environmental matters abroad.

(2) Maintains liaison with ASD (MRA&L) on matters pertaining to EO 12114 and DOD Directive 6050.7.

(c) The Chief of Engineers:

(1) Serves as DA staff proponent for policy matters under EO 12114, DOD Directive 6050.7, and this regulation.

(2) Applies the provisions of this regulation in the planning and execution

of overseas construction activities where appropriate in light of applicable statutes and Status of Forces Agreements (SOFAs).

(d) Deputy Chief of Staff for Operations and Plans:

(1) Serves as the focal point on the Army Staff on integrating environmental considerations required by this chapter into appropriate Army plans and activities which could reasonably be expected to have widespread, long-term, and severe impacts on the global commons or the territories of foreign nations.

(2) Consults with Foreign Military Rights Affairs of ASD (ISA) on significant or sensitive actions affecting relations with another nation.

(e) The Judge Advocate General shall provide advice and assistance concerning the requirements of EO 12114 and DOD Directive 6050.7.

(f) DA Staff Agencies shall consult with HQDA (DAMO-SSM) on significant or sensitive actions or decisions affecting relations with another nation.

(g) DA agencies shall:

(1) Prepare and consider environmental documents for proposed actions required by this regulation.

(2) Insure that regulations and other policy issuances are reviewed for consistency with this regulation.

(3) Designate a single point of contact for matters pertaining to this regulation.

(4) Consult with HQDA (DAMO-SSM) on significant or sensitive actions affecting relations with another nation.

§ 651.40 Implementation guidance.

(a) Environmental documents prepared under the provisions of this subpart should use the format for such documents as contained in Appendix F or as appropriate in light of the applicable statutes and SOFAs.

(b) Nominations for inclusions in the list of Army Categorical Exclusions—Global Commons are to be submitted to HQDA (through DAMO-SSM to DAEN-ZCE).

[45 FR 69215, Oct. 20, 1980, as amended at 47 FR 51579, Nov. 16, 1982]

APPENDIX A—LIST OF CATEGORICAL EXCLUSIONS

1. Normal personnel, fiscal, and administrative activities involving military and civilian personnel (recruiting, processing, paying, and records keeping).

2. Law and order activities performed by military police and physical plant protection and security personnel, excluding formulation and/or enforcement of hunting and fishing policies or regulations which differ substantively from those in effect on surrounding non-Army lands.

3. Recreation and welfare activities not involving off-road recreational vehicle management; forestry and fish and wildlife management plans and activities except those that involve introduction of or effect on exotic, endangered, or threatened species.

4. Commissary and PX operations.

5. Routine repair and maintenance of buildings, roads, airfields, grounds, equipment and other facilities to include the lay away of facilities except in cases requiring disposal of hazardous or contaminated materials.

6. Routine procurement of goods and services, including routine utility services.

7. Construction that does not significantly alter land use, provide the operation of the project when completed would not of itself have a significant environmental impact; includes out-grants to private lessees for similar construction. (REC required).

8. Simulated war games and other tactical and logistical excercises without troops.

9. Training entirely of an administrative or classroom nature.

10. Material storage other than storage of ammunition, explosives, pyrotechnics, nuclear materials, and other hazardous/toxic materials except for storage of such materials in structures designed and maintained for that explicit purpose.

11. Operations conducted by established laboratories in enclosed facilities where: (a) All airborne emissions, waterborne effluents, external radiation levels, outdoor noise, and solid or bulk liquid waste disposal practices are in compliance with existing federal, state, and local laws and regulations; and (b) no animals which must be captured from the wild are used as research subjects (excluding reintroduction projects).

12. Developmental and operational testing on a military installation, where the tests are conducted in conjunction with normal military training or force maintenance activities so that the tests produce only incremental impact, if any; and provided that the training/force maintenance activities have been adequately assessed, where required, in other Army environmental documents. (REC required).

13. Routine movement of personnel; routine handling and distribution of non-hazardous and hazardous materials in conformance with DA, EPA, Department of Transportation and state regulations.

14. Reduction and realignment of civilian and/or military personnel which fall below the thresholds for reportable actions as prescribed in AR 5-10. Conversion of commercial activities (CA) to contract performance of services from in-house performance under the provisions of DOD Directive 4100.15.

15. Preparation of regulations, directives, manuals and other guidance documents related to action that qualify for categorical exclusion.

16. Acquisition, installation and operation of utility systems and communication, data processing, cable systems and similar electronic equipment which use existing rights of way, easements, distribution systems, and facilities.

17. Activities which identify the state of the existing environment without altering it (inspections, surveys, investigations), including the granting of any permits necessary for such surveys.

18. Deployment of military units on a TDY basis where existing facilities are used and the activities to be performed have no significant impact on the environment (REC required).

19. Preparation of regulations, procedures, manuals, and other guidance documents that implement without substantial change the regulations, procedures, manuals, and other guidance documents of higher headquarters or another Federal agency which have already been environmentally evaluated.

20. Grants of easements for the use of existing rights-of-way for use by vehicles; electrical power, telephone and other transmission and communication lines; transmitter and relay facilities; water, wastewater, stormwater, and irrigation pipelines, pumping stations, and facilities; and for other similar public utility, and transportation uses (REC required).

21. Grants of leases, licenses, and permits to utilize existing Army controlled property for: Agriculture and grazing; classroom, office warehouse and administrative space; housing; other use similar to previous or concurrent Army use of the property; and historical or archaeological studies or preservation; use of non-Army property for Army activities where the action is consistent with existing land use plans (REC required).

22. Grants of consents to use a Government-owned easement in a manner not inconsistent with existing Army use of the easement; disposal of excess easement areas to the underlying fee owner (REC required).

23. Grants of licenses for the operation of private or publicly-owned telephone, gas, water, electricity, community antenna television, and other distribution systems normally considered as public utilities (REC required).

24. Reporting excess real property to the General Services Administration; transfer of real property administrative control within the Army or to another military department or other Federal department or agency, including the return of public domain lands to the Department of the Interior; and reporting of property available for outgranting and grants of leases, licenses, permits and easements for use of excess or surplus property without significant change in land use (REC required).

25. Disposal of existing uncontaminated buildings and other improvements for removal off-site (REC required).

26. Studies that involve no commitment of resources other than manpower (REC required).

27. Study and test activities within the procurement program for Military Adaptation of Commercial Items for items manufactured in the U.S. (REC required).

28. Proposed actions determined to be of such an environmentally insignificant nature as not to meet the threshold for requiring an environmental assessment (REC required).

[45 FR 69215, Oct. 20, 1980, as amended at 47 FR 51579, Nov. 16, 1982]

APPENDIX B—CONTENT OF THE EIS

This appendix is intended to supplement 40 CFR 1502.10 through 1502.18.

1. *Cover Sheet.* The cover sheet shall not exceed one page (40 CFR 1502.11) and shall include:

a. A cover sheet preceded by a protective cover sheet that contains the following statement: The material contained in the attached (Final or Draft) Environmental Impact Statement is for internal coordination use only and may not be released to non-Department of Defense Agencies or individuals until coordination has been completed and the material has been cleared for public release by appropriate authority. This sheet will be removed prior to filing the document with EPA.

b. A list of responsible agencies including the lead agency and any cooperating agency.[1]

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[1] The EIS is an Army document, not a contractor's document. Contractors who assist in the EIS preparation are not listed here but in the list of preparers.

c. The title of the proposed action that is the subject of the statement (and, if appropriate, the titles of related cooperating agency actions), together with the state(s) and county(ies) (or other jurisdiction as applicable) where the action is located.

d. The name, address, and telephone number of the person at the agency who can supply further information, and, as appropriate, the name and title of the major approval authority(ies) in the command channel through HQDA Staff proponent.

e. A designation of the statement as a draft, final, or draft or final supplement.

f. A one-paragraph abstract of the statement that should describe only the need for the proposed action, alternative actions, and the significant environmental consequences of the proposed action and alternatives.

g. The date by which comments must be received (computed in cooperation with EPA).

See example cover sheet, Figure B-1.

FIGURE B-1—EXAMPLE COVER SHEET

Lead Agency: Department of the Army, TRADOC

Cooperating Agency(ies): (if any) Heritage Conservation and Recreation Service, Department of the Interior

Title of Proposed Action: Realignment of Ft Swampy Training Mission

Affected Jurisdiction: State of Maryland, Smith, Taylor and Jones Counties

Preparer/Proponent: Name, Address and Telephone Number of Environmental Coordinator; Approved (or Reviewed by): Name and Title of Proponent (i.e., Installation Commander or Program Manager)

Approved (or Reviewed by): Name and Title of any Intermediate Proponent (i.e., MACOM Commander); Approved by: Name and Title of DA Staff Proponent (i.e., Director of program affected by EIS)

Documentation Designation: Draft or Final EIS (or Draft or Final Supplemented EIS).

Abstract: One paragraph summary.

Review Comment Deadline: (Computed in cooperation with EPA guidance).

2. *Summary.* The summary shall stress the major conclusions of environmental analysis, areas of controversy, and issues yet to be resolved. It should list all Federal permits, licenses, and other entitlements that must be obtained prior to proposal implementation. Further, a statement of compliance with the requirements of other Federal environmental protection laws will be included (40 CFR 1502.25).

In order to simplify consideration of complex relationships, every effort will be made to present the summary of alternatives and their impacts in a graphic format with narrative. This summary should not exceed 10 pages.

3. *Table of Contents.* This section will provide for the table of contents, list of figures and tables, and a list of all referenced documents, including a bibliography of references within the body of the EIS. The table of contents should have enough detail so that searching for sections of text is not difficult.

4. *The Purpose of and Need for the Action.* This section should clearly state the nature of the problem and discuss how the proposed action or range of alternatives would solve the problem. This section is designed specifically to call attention to the benefits of the proposed action. If a cost/benefit analysis has been prepared for the proposed action, it may be included here, or attached as an appendix and referenced here. This section shall briefly give the relevant background information on the proposed action and summarize its operational, social, economic, and environmental objectives.

5. *Alternatives Considered.* This section presents all reasonable alternatives and their environmental impacts. An examination of each specific proposal in clear terms is required. This section should be written in simple, non-technical language for the lay reader. A "no action" alternative will be included (40 CFR 1502.14(d)). For actions other than construction, the term "no action" is often misleading because a continuation of the status quo is implicit. Required in this section is an examination of the status quo. A preferred alternative need not be identified in the DEIS; however, a preferred alternative generally must be included in the FEIS (40 CFR 1502.14(e)).

A simple title or a letter or number symbol may be used for each of the discussed alternatives (e.g., "Alternative A"). Reference to the title or designation will be continued uniformly throughout the document in the appropriate sections.

The environmental impacts of the alternatives will be presented in comparative form, thus sharply defining the issues and providing a clear basis for choice among the options that are provided the decisionmaker and the public (40 CFR 1502.14). The information should be summarized in a brief, concise manner. The use of tabular or matrix format(s) is encouraged to provide the reviewer with an at-a-glance review. In some the following points are required:

a. A description of all reasonable alternatives including the preferred action, including all alternatives beyond DA jurisdiction (40 CFR 1502.14(c)), and the "no action" alternative.

b. A comparative presentation of the environmental consequences of all reasonable alternative actions including the preferred alternative.

c. A description of the mitigation measures nominated for incorporation into the proposed action and alternatives, as well as mitigation measures available but not incorporated.

d. Listing of any alternatives that were eliminated from detailed study. Briefly discuss the reasons for which each alternative was eliminated.

6. *Affected Environment(s).* This section will contain information about existing conditions in the affected area(s) necessary to understand the potential effects of the alternatives under consideration (40 CFR 1502.15). Environments created by the implemented proposal will be included as appropriate. Affected elements could include, for example, biophysical characteristics (ecology, water quality); land use and land use plans; architectural, historical, and cultural amenities; utilities and services; and transportation. This section will not be encyclopedic. It will be written clearly and the degree of detail for all points covered will be related to the significance and magnitude of expected impacts. Elements not impacted by any of the alternatives need only be presented in summary form or referenced.

7. *Environmental and Socio-Economic Consequences.* This section of the EIS forms the scientific and analytic basis for the summary comparison of effects in Part 5. The following will be discussed (40 CFR 1502.16):

a. Direct Effects and Their Significance. Include in the discussion the direct impacts on human health and welfare and on other forms of life and related ecosystems. Examples of direct effects might include noise from military helicopter operations or the benefits derived from the installation of wet scrubbers to meet air quality control standards.

b. Indirect Effects and Their Significance. Include here socio-economic impacts. Many Federal actions attract people to previously unpopulated areas and indirectly induce pollution, traffic congestion, and haphazard land development. Conversely, other actions may disperse the existing population. Aircraft noise often affects future development patterns, and air pollution abatement operations may result in secondary water pollution problems.

c. Possible conflicts between the proposed actions and Federal, regional, state, and local (including Indian tribe) land use plans, policies, and controls for the area(s) concerned. Compare the land use aspects of the proposed action, and discuss possible conflicts, such as, siting an extremely noisy activity adjacent to a residential area, leasing land for purposes inconsistent with state wildlife management, or creating conflicts with prime and unique farm land policies.

d. The environmental effects of alternatives, including the proposed action.

(1) Impacts of the alternatives, including a worst case analysis where there are gaps in relevant information or scientific uncertainty.

(2) Adverse environmental effects which cannot be avoided should the proposal be implemented. Include the relationship between short-term uses of the human environment and the maintenance and enhancement of long-term productivity. The section should discuss the extent to which the proposed action and its alternatives involve short-term vs. long-term environmental gains and losses. In this context, short-term and long-term do not refer to any rigid time period and should be viewed in terms of the environmentally significant consequences of the proposed action. Thus, "short-term" can range from a very short period of time during which an action takes place to the expected life of a facility.

e. Energy Requirements and Conservation Potential of Various Alternatives and Mitigation Measures. Consult the Energy Resource Impact Statement (AR 11-27), when applicable, to satisfy this requirement. Account for the energy consumption of each proposed alternative and associated economics. Discuss, where appropriate, the uses of renewable and nonrenewable energy resources. A discussion of conservation techniques which could attenuate energy consumption should also be discussed within this section—for example, the use of insulation for newly constructed family housing which would reduce the long-term consumption of fuel oil or natural gas.

f. Natural or Depletable Resource Requirements and Conservation Potential of Various Mitigation Measures. Include discussion of any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented. The term "resources" should include:

(1) Materials. Discuss materials in short supply (metals, wood, etc.), but do not include materials which are plentiful or have competitive alternatives (for example, aggregate or fill material).

(2) Natural. Discuss the use of natural resources resulting in irrevocable effects such as ecosystem imbalance, destruction of wildlife, loss of prime and unique farm lands. Specifically include consumption of natural energy resources in short supply, such as oil or natural gas.

(3) Cultural. Discuss destruction of human interest sites, archaeological/historical sites, scenic views or vistas, or valued open space. Reiterate lasting socio-economic effects the proposed action might have on the surrounding community.

g. Urban Quality, Historic and Cultural Resources, and the Design of the Built Environment (including reuse and conservation potential of various alternatives and mitigation measures). Discuss the effects of adjacent neighborhoods and the city at large. Examine the effects on physical design features (also known as built environment) and resultant impacts on social interaction areas such as privacy, public opinion, personnel perceptions, and other aspects of the social environment. Review the reuse potential of existing building space and its time use allocation (usually referred to as time and spatial management). (Time and spatial management allows for conservation of energy and other resources by discouraging new construction and operation until all existing building and time allocations have been fully scrutinized for alternate reuse).

h. Means to Mitigate Adverse Environmental Effects. Include mitigations not already included as part of the various alternatives. Also, specify mitigations that require action by other agencies or outside parties.

8. *List of Preparers.* The EIS shall list the names of its preparers, together with their qualifications (expertise, experience, professional disciplines) (40 CFR 1502.17). Include those people who were primarily responsible for preparing (research, data collection, and writing) the EIS or significant background or support papers, including basic components of the statement. Where possible, the persons who are responsible for a particular analysis, including analysis of background papers, shall be identified. If some or all of the preparers are contractors' employees, they may be identified as such. Identification of the firm which prepared the EIS is not, by itself, adequate to meet the requirements of this point. Normally, the list will not exceed two pages.

9. *Distribution List.* For the DEIS a list will be prepared indicating from whom review and comment is requested. The list will include public agencies and private parties or organizations. The FEIS will normally only list those who have commented or shown an interest in the proposed action.

10. *Index.* The index shall be an alphabetical list of topics in the EIS, especially of the types of effects induced by the various alternative actions. Reference may be made to either page number or paragraph number.

11. *Appendices.* If an agency prepares an appendix to an EIS, the appendix shall:

a. Consist of material prepared in connection with an EIS (as distinct from material which is not so prepared and which is incorporated by reference).

b. Consist only of material which substantiates any analysis fundamental to an impact statement.

c. Be analytic and relevant to the decision to be made.

d. Be circulated with the EIS or be readily available upon request.

[45 FR 69215, Oct. 20, 1980, as amended at 47 FR 51580, Nov. 16, 1982]

Appendix C—Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act

(40 CFR Parts 1500-1508, 43 FR 55978-56007, November 29, 1978)

Appendix D—Implementing a Monitoring Program

The following steps are provided as guidance for setting up a mitigation monitoring and enforcement program where applicable in accordance with 40 CFR 1505.2(c). More detail is available in U.S. Geological Survey Circular 782, *A Method for Post-EIS Monitoring,* 1979.

1. Identify the key impacts or mitigation methods to be monitored.

2. Determine data needs for each impact or mitigation to be monitored, including:

a. Quantitive indicators suitable for measuring impacts or mitigation.

b. Alternative indicators.

c. Recommended data collection frequency (including minimum data collection frequency necessary to obtain meaningful information).

d. Recommended format (maps, tables, text, etc.)

e. Level of detail or accuracy possible with the specified method.

f. Locations or geographic areas where data should be collected.

g. Potential methods of collection, including installation of data-gathering devices.

3. Determine data availability and feasibility of data gathering.

4. Delegate or assign responsibility to the appropriate agency or office.

5. Collect and analyze data.

6. Provide status and results of the program to the office which is the public Point of Contact for the project being monitored (40 CFR 1505.3(c) and (d)).

Appendix E—Requirements for Environmental Considerations—Global Commons

(Refer to Department of Defense, Final Procedures issued April 12, 1979 (44 FR 21786), inclosure 1.)

INCLOSURE 1—REQUIREMENTS FOR ENVIRONMENTAL CONSIDERATIONS—GLOBAL COMMONS

A. *General.* This enclosure implements the requirements of Executive Order 12114 with respect to major Department of Defense actions that do significant harm to the environment of the global commons. The focus is not the place of the action, but the location of the environment with respect to which there is significant harm. The actions prescribed by this enclosure are the exclusive and complete requirement for taking account of environmental considerations with respect to Department of Defense activities that affect the global commons.

B. *Actions Included.* The requirements of this enclosure apply only to major federal actions that do significant harm to the environment of the global commons.

C. *Environmental Document Requirements.*

1. *General.* When an action is determined to be a major federal action that significantly harms the environment of the global commons, an environmental impact statement, as described below, will be prepared to enable the responsible decision-making official to be informed of pertinent environmental considerations. The statement may be a specific statement for the particular action, a generic statement covering the entire class of similar actions, or a program statement.

2. *Limitations on Actions.* Until the requirements of this enclosure have been met with respect to actions involving the global commons, no action concerning the proposal may be taken that does significant harm to the environment or limits the choice of reasonable alternatives.

3. *Emergencies.* Where emergency circumstances make it necessary to take an action that does significant harm to the environment without meeting the requirements of this enclosure, the DoD component concerned shall consult with the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics). This includes actions that must be taken to promote the national defense or security and that cannot be delayed, and actions necessary for the protection of life or property.

4. *Combining Documents.* Environmental documents may be combined with other agency documents to reduce duplication. If an environmental impact statement for a particular action already exists, regardless of what federal agency prepared it, no new statement is required by this directive.

5. *Collective Statements.* Consideration should be given to the use of generic and program statements. Generic statements may include actions with relevant similarities such as common timing, environmental effects, alternatives, methods of implementation, or subject matter.

6. *Tiering.* Consideration should be given to tiering of environmental impact statements to eliminate repetitive discussions of the same issue and to focus the issues. Tiering refers to the coverage of general matters in broader environmental impact statements, with succeeding narrower statements or environmental analyses that incorporate by reference the general discussion and concentrate only on the issues specific to the statement subsequently prepared.

7. *Lead Agency.* When one or more other federal agencies are involved with the Department of Defense in an action or program, a lead agency may be designated to supervise the preparation of the environmental impact statement. In appropriate cases, more than one agency may act as joint lead agencies. The following factors should be considered in making the lead agency designation:

a. The magnitude of agency involvement;

b. Which agency or agencies have project approval and disapproval authority;

c. The expert capabilities concerning the environmental effects of the action;

d. The duration of agency involvement; and

e. The sequence of agency involvement.

8. *Categorical Exclusions.* The Department of Defense may provide categorical exclusions for actions that normally do not, individually or cumulatively, do significant harm to the environment. If an action is covered by a categorical exclusion no environmental assessment or environmental impact statement is required. Categorical exclusions will be established by the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) and will be identified in Attachment 1 to this enclosure. DoD components identifying recurring actions that have been determined, after analysis, not to do significant harm to the environment should submit recommendations for categorical exclusions and accompanying justification to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics).

9. *Environmental Assessments.* The purpose of an environmental assessment is to assist DoD components in determining whether an environmental impact statement is required for a particular action. The assessment should be brief and concise but should include sufficient information on which a determination can be made whether the proposed action is major and federal, and whether it significantly harms the environment of the global commons. As a minimum, the assessment should include consideration of the need for the proposed action and the environmental effect of the proposed action. The environmental assessment

will be made available to the public in the United States upon request, but there is no requirement that it be distributed for public comment.

D. *Environmental Impact Statements.*

1. *General.* Environmental impact statements will be concise and no longer than necessary to permit an informed consideration of the environmental effects of the proposed action on the global commons and the reasonable alternatives. If an action requiring an environmental impact statement also has effects on the environment of a foreign nation or on a resource designated as one of global importance, the statement need not consider or be prepared with respect to these effects. The procedures for considering these effects are set out in enclosure 2.

2. *Draft Statement.* Environmental impact statements will be prepared in two stages and may by supplemented. The first, or draft statement, should be sufficiently complete to permit meaningful analysis and comment. The draft statement will be made available to the public, in the United States, for comment. The Department of State, the Council on Environmental Quality, and other interested federal agencies will be informed of the availability of the draft statement and will be afforded an opportunity to comment. Contacts with foreign governments are discussed in subsection D.4. of the directive and subsection D.11. of this enclosure.

3. *Final Statement.* Final statements will consider, either individually or collectively, substantive comments received on the draft statement. The final statement will be made available to the public in the United States.

4. *Supplemental Statement.* Supplements to the draft or final statement should be used when substantial changes to the proposed action are made relative to the environment of the global commons or when significant new information or circumstances, relevant to environmental concerns, bears on the proposed action or its environmental effects on the global commons. Supplemental statements will be circulated for comment as in subsection 2. above unless alternative procedures are approved by the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics).

5. *Statement Content.* The statement will include: A section on consideration of the purpose of and need for the proposed action; a section on the environmental consequences of the proposed action and reasonable alternatives; a section that provides a succinct description of the environment of the global commons affected by the proposed action and reasonable alternatives; and a section that analyzes, in comparative form, the environmental effects on the global commons of the proposed action and reasonable alternatives.

6. *Incomplete Information.* The statement should indicate when relevant information is missing due to unavailability or scientific uncertainty.

7. *Hearings.* Public hearings are not required. Consideration should be given in appropriate cases to holding or sponsoring public hearings. Factors in this consideration include: foreign relations sensitivities; whether the hearings would be an infringement or create the appearance of infringement on the sovereign responsibilities of another government; requirements of domestic and foreign governmental confidentiality; requirements of national security; whether meaningful information could be obtained through hearings; time considerations; and requirements for commercial confidentiality. There is no requirement that all factors listed in this section be considered when one or more factors indicate that public hearings would not produce a substantial net benefit to those responsible for authorizing or approving the proposed action.

8. *Decision.* Relevant environmental documents developed in accordance with this enclosure will accompany the proposal for action through the review process to enable officials responsible for authorizing or approving the proposed action to be informed and to take account of environmental considerations. One means of making an appropriate record with respect to this requirement is for the decision-maker to sign and date a copy of the environmental impact statement indicating that it has been considered in the decision-making process. Other means of making an appropriate record are also acceptable.

9. *Timing.* No decision on the proposed action may be made until the later of 90 days after the draft statement has been made available and notice thereof published in the FEDERAL REGISTER, or 30 days after the final statement has been made available and notice thereof published in the FEDERAL REGISTER. The 90-day period and the 30-day period may run concurrently. Not less than 45 days may be allowed for public comment. The Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) may, upon a showing of probable important adverse effect on national security or foreign policy, reduce the 30-day, 45-day, and 90-day periods.

10. *Classified Information.* Environmental assessments and impact statements that address classified proposals will be safeguarded and classified information will be restricted from public dissemination in accordance with Department of Defense procedures (DoD Directive 5200.1) established for such information under Executive Order 12065. The requirements of that Executive Order take precedence over any requirement of disclosure in this directive. Only

unclassified portions of environmental documents may be disseminated to the public.

11. *Foreign Governments.* Consideration will be given to whether any foreign government should be informed of the availability of environmental documents. Communications with foreign governments concerning environmental agreements and other formal arrangements with foreign governments concerning environmental matters under this directive will be coordinated with the Department of State. Informal, working-level communications and arrangements are not included in this coordination requirement. Coordination with the Department of State will be through the Assistant Secretary of Defense (International Security Affairs).

APPENDIX F—REQUIREMENTS FOR ENVIRONMENTAL CONSIDERATIONS—FOREIGN NATIONS AND PROTECTED GLOBAL RESOURCES

(Refer to Department of Defense, Final Procedures issued April 12, 1979 (44 FR 21786), inclosure 2.)

INCLOSURE 2—REQUIREMENTS FOR ENVIRONMENTAL CONSIDERATIONS—FOREIGN NATIONS AND PROTECTED GLOBAL RESOURCES

A. *General.* This enclosure implements the requirements of Executive Order 12114 to provide for procedural and other actions to be taken to enable officials to be informed of pertinent environmental considerations when authorizing or approving certain major Department of Defense actions that do significant harm to the environment of a foreign nation or to a protected global resource.

B. *Actions Included.*

1. The requirements of this enclosure apply only to the following actions:

a. Major Federal actions that significantly harm the environment of a foreign nation that is not involved in the action. The involvement of the foreign nation may be directly by participation with the United States in the action, or it may be in conjunction with another participating nation. The focus of this category is on the geographical location of the environmental harm and not on the location of the action.

b. Major Federal actions that are determined to do significant harm to the environment of a foreign nation because they provide to that nation: (1) A product, or involve a physical project that produces a principal product, emission, or effluent, that is prohibited or strictly regulated by federal law in the United States because its toxic effects on the environment create a serious public health risk; or (2) a physical project that is prohibited or strictly regulated in the United States by federal law to protect the environment against radioactive substances. Included in the category of "prohibited or strictly regulated" are the following: asbestos, vinyl chloride, acrylonitrile, isocyanates, polychlorinated biphenyls, mercury, beryllium, arsenic, cadmium, and benzene.

c. Major federal actions outside the United States that significantly harm natural or ecological resources of global importance designated for protection by the President or, in the case of such a resource protected by international agreement binding on the United States, designated for protection by the Secretary of State. Such determinations by the President or the Secretary of State are listed in Attachment 1 to this enclosure.

2. The actions prescribed by this enclosure are the exclusive and complete requirement for taking account of environmental considerations with respect to federal actions that do significant harm to the environment of foreign nations and protected global resources as described in subsection B.1., above. No action is required under this enclosure with respect to federal actions that affect only the environment of a participating or otherwise involved foreign nation and that do not involve providing products or physical projects producing principal products, emissions, or effluents that are prohibited or strictly regulated by federal law in the United States, or resources of global importance that have been designated for protection.

C. *Environmental Document Requirements.*

1. *General.* a. There are two types of environmental documents officials shall use in taking account of environmental considerations for actions covered by this enclosure:

(1) Environmental studies—bilateral or multilateral environmental studies, relevant or related to the proposed action, by the United States and one or more foreign nations or by an international body or organization in which the United States is a member or participant; and

(2) Environmental reviews—concise reviews of the environmental issues involved that are prepared unilaterally by the United States.

b. This section identifies the procedures for the preparation of environmental studies or reviews when required by this enclosure and the exceptions from the requirement to prepare environmental studies or reviews. If an environmental document already exists for a particular action, regardless of what federal agency prepared it, no new document is required by this enclosure.

2. *Lead Agency.* When one or more other federal agencies are involved with the De-

partment of Defense in an action or program, a lead agency may be designated to supervise the preparation of environmental documentation. In appropriate cases, more than one agency may act as joint lead agencies. The following factors should be considered in making the lead agency designation:

a. The magnitude of agency involvement;

b. Which agency or agencies have project approval and disapproval authority;

c. The expert capabilities concerning the environmental effects of the action;

d. The duration of agency involvement; and

e. The sequence of agency involvement.

3. *Exemptions.* There are general exemptions from the requirements of this enclosure provided by Executive Order 12114, and the Secretary of Defense has the authority to approve additional exemptions.

a. *General Exemptions.* The following actions are exempt from the procedural and other requirements of this enclosure under general exemptions established for all agencies by Executive Order 12114:

(1) Actions that the DoD component concerned determines do not do significant harm to the environment outside the United States or to a designated resource of global importance.

(2) Actions taken by the President. These include: signing bills into law; signing treaties and other international agreements; the promulgation of Executive Orders; Presidential proclamations; and the issuance of Presidential decisions, instructions, and memoranda. This includes actions taken within the Department of Defense to prepare or assist in preparing recommendations, advice, or information for the President in connection with one of these actions by the President. It does not include actions taken within the Department of Defense to implement or carry out these instruments and issuances after they are promulgated by the President.

(3) Actions taken by or pursuant to the direction of the President or a cabinet officer in the course of armed conflict. The term "armed conflict" refers to: hostilities for which Congress has declared war or enacted a specific authorization for the use of armed forces; hostilities or situations for which a report is prescribed by section 4(a)(1) of the War Powers Resolution, 50 U.S.C.A. 1543(a)(1) (Supp. 1978); and other actions by the armed forces that involve defensive use or introduction of weapons in situations where hostilities occur or are expected. This exemption applies as long as the armed conflict continues.

(4) Actions taken by or pursuant to the direction of the President or a cabinet officer when the national security or national interest is involved. The determination that the national security or national interest is involved in actions by the Department of Defense must be made in writing by the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics).

(5) The activities of the intelligence components utilized by the Secretary of Defense under Executive Order 12036, 43 FR 3674 (1978). These components include the Defense Intelligence Agency, the National Security Agency, the offices for the collection of specialized intelligence through reconnaissance programs, the Army Office of the Assistant Chief of Staff for Intelligence, the Office of Naval Intelligence, and the Air Force Office of the Assistant Chief of Staff for Intelligence.

(6) The decisions and actions of the Office of the Assistant Secretary of Defense (International Security Affairs), the Defense Security Assistance Agency, and the other responsible offices within DoD components with respect to arms transfers to foreign nations. The term "arms transfers" includes the grant, loan, lease, exchange, or sale of defense articles or defense services to foreign governments or international organizations, and the extension or guarantee of credit in connection with these transactions.

(7) Votes and other actions in international conferences and organizations. This includes all decisions and actions of the United States with respect to representation of its interests at international organizations, and at multilateral conferences, negotiations, and meetings.

(8) Disaster and emergency relief actions

(9) Actions involving export licenses, export permits, or export approvals, other than those relating to nuclear activities. This includes: advice provided by DoD components to the Department of State with respect to the issuance of munitions export licenses under section 38 of the Arms Export Control Act, 22 U.S.C. 2778 (1976); advice provided by DoD components to the Department of Commerce with respect to the granting of export licenses under the Export Administration Act of 1969, 50 U.S.C. App. 2401-2413 (1970 & Supp. V 1975); and direct exports by the Department of Defense of defense articles and services to foreign governments and international organizations that are exempt from munitions export licenses under section 38 of the Arms Export Control Act, 22 U.S.C. 2778 (1976). The term "export approvals" does not mean or include direct loans to finance exports.

(10) Actions relating to nuclear activities and nuclear material, except actions providing to a foreign nation a nuclear production or utilization facility, as defined in the Atomic Energy Act of 1954, as amended, or a nuclear waste management facility.

b. *Additional Exemptions.* The Department of Defense is authorized under Executive Order 12114 to establish additional exemptions that apply only to the Department's operations. There are two types of additional exemptions: Case-by-case and class.

(1) *Case-by-Case Exemptions.* Exemptions other than those specified above may be required because emergencies, national security considerations, exceptional foreign policy requirements, or other special circumstances preclude or are inconsistent with the preparation of environmental documentation and the taking of other actions prescribed by this enclosure. The following procedures apply for approving these exemptions:

(a) *Emergencies.* This category includes actions that must be taken to promote the national defense or security and that cannot be delayed, and actions necessary for the protection of life or property. The heads of the DoD components are authorized to approve emergency exemptions on a case-by-case basis. The Department of Defense is required to consult as soon as feasible with the Department of State and the Council on Environmental Quality with respect to emergency exemptions. The requirement to consult as soon as feasible is not a requirement of prior consultation. A report of the emergency action will be made by the DoD component head to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics), who, with the Assistant Secretary of Defense (International Security Affairs), shall undertake the necessary consultations.

(b) *Other Circumstances.* National security considerations, exceptional foreign policy requirements, and other special circumstances not identified in paragraph C.3.a. above, may preclude or be inconsistent with the preparation of environmental documentation. In these circumstances, the head of the DoD component concerned is authorized to exempt a particular action from the environmental documentation requirements of this enclosure after obtaining the prior approval of the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics), who, with the Assistant Secretary of Defense (International Security Affairs), shall consult, before approving the exemption, with the Department of State and the Council on Environmental Quality. The requirement for prior consultation is not a requirement for prior approval.

(2) *Class Exemptions.* Circumstances may exist where a class exemption for a group of related actions is more appropriate than a specific exemption. Class exemptions may be established by the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) who, with the Assistant Secretary of Defense (International Security Affairs), shall consult, before approving the exemption, with the Department of State and the Council on Environmental Quality. The requirement for prior consultation is not a requirement for prior approval. Requests for class exemptions will be submitted by the head of the DoD component concerned to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) after coordination with other interested DoD components. Notice of the establishment of a class exemption will be issued as Attachment 2 to this enclosure.

4. *Categorical Exclusions.* The Department of Defense is authorized by Executive Order 12114 to provide for categorical exclusions. A categorical exclusion is a category of actions that normally do not, individually or cumulatively, do significant harm to the environment. If an action is covered by a categorical exclusion, no environmental document is required. Categorical exclusions will be established by the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics), and will be identified in Attachment 3 to this enclosure. DoD components identifying recurring actions that have been determined, after analysis, not to do significant harm to the environment should submit requests for categorical exclusions and accompanying justification to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics).

D. *Environmental Studies.*

1. *General.* Environmental studies are one of two alternative types of documents to be used for actions described by paragraph B. of this enclosure.

a. An environmental study is an analysis of the likely environmental consequences of the action that is to be considered by DoD components in the decision-making process. It includes a review of the affected environment, significant actions taken to avoid environmental harm or otherwise to better the environment, and significant environmental considerations and actions by the other participating nations, bodies, or organizations.

b. An environmental study is a cooperative action and not a unilateral action undertaken by the United States. It may be bilateral or multilateral, and it is prepared by the United States in conjunction with one or more foreign nations, or by an international body or organization in which the United States is a member or participant. The environmental study, because it is prepared as a cooperative undertaking, may be best suited for use with respect to actions that provide strictly regulated or prohibited products or projects to a foreign nation (B.1.b.) and actions that affect a protected global resource (B.1.c.).

2. *Department of State Coordination.* Communications with foreign governments concerning environmental studies and other formal arrangements with foreign governments concerning environmental matters under this directive will be coordinated with the Department of State. Informal, work-

ing-level communications and arrangements are not included in this coordination requirement. Coordination with the Department of State will be through the Assistant Secretary of Defense (International Security Affairs).

3. *Whether to Prepare an Environmental Study.* The judgment whether the action is one that would do significant harm to one of the environments covered by this enclosure normally will be made in consultation with concerned foreign governments or organizations. If a negative decision is made, the file will be documented with a record of that decision and the decision-makers who participated. If a decision is made to prepare a study then, except as provided by this enclosure, no action concerning the proposal may be taken that would do significant harm to the environment until the study has been completed and the results considered.

4. *Content of the Study.* The document is a study of the environmental aspects of the proposed action to be considered in the decision-making process. The precise content of each study must be flexible because of such considerations as the sensitivity of obtaining information from foreign governments, the availability of useful and understandable information, and other factors identified under "Limitations," (subsection D.6., below). The study should, however, include consideration of the following:

a. A general review of the affected environment;

b. The predicted effect of the action on the environment;

c. Significant known actions taken by governmental entities with respect to the proposed action to protect or improve the environment; and

d. If no actions are being taken to protect or enhance the environment, whether the decision not to do so was made by the affected foreign government or international organization.

5. *Distribution of the Study.* Except as provided under "Limitations," (subsection D.6., below), and except where classified information is involved, environmental studies will be made available to the Department of State, the Council on Environmental Quality, other interested federal agencies, and, on request, to the public in the United States. Interested foreign governments also may be informed of the studies, subject to the "Limitations" (subsection D.6., below) and controls on classified information, and furnished copies of the documents. No distribution is required prior to the preparation of the final version of the study or prior to taking the action that caused the study to be prepared.

6. *Limitations.* The requirements with respect to the preparation, content, and distribution of environmental studies in the international context must remain flexible. The specific procedures must be determined on a case-by-case basis and may be modified where necessary to:

a. Enable the component to act promptly. Considerations such as national security and foreign government involvement may require prompt action that must take precedence in the environmental review process;

b. Avoid adverse impacts on relations between the United States and foreign governments and international organizations;

c. Avoid infringement or the appearance of infringement on the sovereign responsibilities of another government. The collection of information and the preparation and distribution of environmental documentation for actions in which another nation is involved, or with respect to the environment and resources of another nation, unless done with proper regard to the sovereign authority of that nation, may be viewed by that nation as an interference in its internal affairs and its responsibility to evaluate requirements with respect to the environment;

d. Ensure consideration of:

(1) Requirements of governmental confidentiality. This refers to the need to protect sensitive foreign affairs information and information received from another government with the understanding that it will be protected from disclosure regardless of its classification;

(2) National security requirements. This refers to the protection of classified information and other national security interests;

(3) Availability of meaningful information. Information on the environment of foreign nations may be unavailable, incomplete, or not susceptible to meaningful evaluation, particularly where the affected foreign nation is not a participant in the analysis. This may reduce or change substantially the normal content of the environmental study;

(4) The extent of the participation of the DoD component concerned and its ability to affect the decision made. The utility of the environmental analysis and the need for an in-depth review diminishes as DoD's role and control over the decision lessens; and

(5) International commercial, commercial confidentiality, competitive, and export promotion factors. This refers to the requirement to protect domestic and foreign trade secrets and confidential business information from disclosure. Export promotion factors includes the concept of not unnecessarily hindering United States exports.

7. *Classified Information.* Classified information will be safeguarded from disclosure in accordance with the Department of Defense procedures (DoD Directive 5200.1) established for such information under Execu-

tive Order 12065. The requirements of that Executive Order take precedence over any requirement of disclosure in this directive.

E. *Environmental Reviews.*

1. *General.* Environmental reviews are the second of the two alternative types of documents to be used for actions covered by paragraph B of this enclosure.

a. An environmental review is a survey of the important environmental issues involved. It includes identification of these issues, and a review of what if any consideration has been or can be given to the environmental aspects by the United States and by any foreign government involved in taking the action.

b. An environmental review is prepared by the DoD component concerned either unilaterally or in conjunction with another federal agency. While an environmental review may be used for any of the actions identified by section B., it may be uniquely suitable, because it is prepared unilaterally by the United States, to actions that affect the environment of a nation not involved in the undertaking (B.1.a.).

2. *Department of State Coordination.* Communications with foreign governments concerning environmental agreements and other formal arrangements with foreign governments concerning environmental matters under this enclosure will be coordinated with the Department of State. Informal working-level communications and arrangements are not included in this coordination requirement. Coordination with the Department of State will be through the Assistant Secretary of Defense (International Security Affairs).

3. *Whether To Prepare an Environmental Review.* Sufficient information will be gathered, to the extent it is reasonably available, to permit an informed judgment as to whether the proposed action would do significant harm to the environments covered by this enclosure. If a negative decision is made, a record will be made of that decision and its basis. If a decision is made to prepare a review, then, except as provided by this enclosure, no action concerning the proposal may be taken that would do significant environmental harm until the review has been completed.

4. *Content of the Review.* An environmental review is a survey of the important environmental issues associated with the proposed action that is to be considered by the DoD component concerned in the decision-making process. It does not include all possible environmental issues and it does not include the detailed evaluation required in an environmental impact statement under enclosure 1 of this directive. There is no foreign government or international organization participation in its preparation, and the content therefore may be circumscribed because of the availability of information and because of foreign relations sensitivities. Other factors affecting the content are identified under "Limitations," (subsection E.6., below). To the extent reasonably practical the review should include consideration of the following:

a. A statement of the action to be taken including its timetable, physical features, general operating plan, and other similar broad-gauge descriptive factors;

b. Identification of the important environmental issues involved;

c. The aspects of the actions taken or to be taken by the DoD component that ameliorate or minimize the impact on the environment; and

d. The actions known to have been taken or to be planned by the government of any participating and affected foreign nations that will affect environmental considerations.

5. *Distribution.* Except as provided under "Limitations," (subsection E.6., below), and except where classified information is involved, environmental reviews will be made available to the Department of State, the Council on Environmental Quality, other interested federal agencies, and, on request, to the public in the United States. Interested foreign governments also may be informed of the reviews and, subject to the "Limitations" (subsection E.6., below) and controls on classified information, will be furnished copies of the documents on request. This provision for document distribution is not a requirement that distribution be made prior to taking the action that is the subject of the review.

6. *Limitations.* The requirements with respect to the preparation, content, and distribution of environmental reviews in the international context must remain flexible. The specific procedures must be determined on a case-by-case basis and may be modified where necessary to:

a. Enable the component to act promptly. Considerations such as national security and foreign government involvement may require prompt action that must take precedence in the environmental review process;

b. Avoid adverse impacts on relations between the United States and foreign governments and international organizations;

c. Avoid infringement or the appearance of infringement on the sovereign responsibilities of another government. The collection of information and the preparation and distribution of environmental documentation for actions in which another nation is involved or with respect to the environment and resources of another nation, unless done with proper regard to the sovereign authority of that nation, may be viewed by that nation as an interference in its internal affairs and its prerogative to evaluate requirements with respect to the environment; and

d. Ensure consideration of:

(1) Requirements of governmental confidentiality. This refers to the need to protect sensitive foreign affairs information and information received from another government with the understanding that it will be protected from disclosure regardless of its classification;

(2) National security requirements. This refers to the protection of classified information;

(3) Availability of meaningful information. Information on the environment of foreign nations may be unavailable, incomplete, or not susceptible to meaningful evaluation, and this may reduce or change substantially the normal content of the environmental review;

(4) The extent of the participation of the DoD component concerned and its ability to affect the decision made. The utility of the environmental analysis and the need for an in-depth review diminishes as the role of the Department of Defense and control over the decision lessens; and

(5) International commercial, commercial confidentiality, competitive, and export promotion factors. This refers to the requirement to protect domestic and foreign trade secrets and confidential business information from disclosure. Export promotion factors includes the concept of not unnecessarily hindering United States exports.

7. *Classified Information.* Classified information will be safeguarded from disclosure in accordance with the DoD procedures (DoD Directive 5200.1) established for such information under Executive Order 12065. The requirements of that Executive Order take precedence over any requirement of disclosure in this directive.

PARTS 652–654—[RESERVED]

PART 655—RADIATION SOURCES ON ARMY LAND

§ 655.10 Use of radiation sources by non-Army entities on Army land (AR 385–11).

(a) Department of the Army permits are required for use, storage, possession, and disposal of radiation sources by non-Army agencies (including civilian contractors) on an Army installation. Concurrence of the installation commander and approval by Headquarters, Department of the Army is required to obtain a Department of the Army (DA) permit.

(1) If a Nuclear Regulatory Commission (NRC) license already permits use or storage of radioactive sources at unspecified Army installations, the non-Army agency still needs a DA permit. The non-Army requestor will send six (6) copies of DA Form 3337 to the installation commander. The commander will then send four (4) copies of DA Form 3337 to Commander, US Army Materiel Development and Readiness Command, ATTN: DRCSF-P, 5001 Eisenhower Avenue, Alexandria, VA 22333. The non-Army requestor may obtain DA Form 3337 from the local Army installation or by written request to Commander, US Army Materiel Development and Readiness Command, ATTN: DRCSF-P, Alexandria, VA 22333.

(2) A DA permit is not required for temporary one-time use or storage (less than 15 consecutive calendar days) of sealed radioactive sources by users with a proper NRC license or agreement state license, if the local commander determines that adequate safety exists. The request for temporary use or storage authority will be submitted on DA Form 3337 in triplicate to the installation commander. A copy of the user's request and local commander's approval will be sent through command channels to CDR, DARCOM within 3 days of the approval.

(b) In all cases approvals will require users to restore the property to its previous condition.

(10 U.S.C. 3012)

[45 FR 26958, Apr. 22, 1980]

PART 656—INSTALLATIONS, USE OF OFF-ROAD VEHICLES ON ARMY LAND

Sec.
656.1 Purpose.
656.2 Applicability.
656.3 Definitions.
656.4 Objectives.
656.5 Policies.
656.6 Responsibilities.
656.7 Environmental considerations.
656.8 Guidelines and criteria for evaluation and utilization of Army lands for off-road vehicle use.

AUTHORITY: 10 U.S.C. 3012.

SOURCE: 42 FR 56326, Oct. 25, 1977, unless otherwise noted.

§ 656.1 Purpose.

The purpose of this regulation is to establish uniform policies, procedures, and criteria for controlling off-road travel by off-road vehicles, and to prescribe appropriate operating conditions for use of such vehicles. This regulation implements DOD Directive 6050.2, August 21, 1974, amended August 10, 1977.

§ 656.2 Applicability.

(a) This regulation applies to all installations and activities in the United States under management and control of the Department of the Army by administrative jurisdiction in accordance with a public lands withdrawal, lease, or similar instrument, under the following conditions of use:

(1) Installations and activities in active use by the Army, those held in an inactive or standby condition for future active use by the Army, and those in an excess category (see AR 405-90, for further guidance with respect to excess properties).

(2) Federally operated installations and activities, or portions thereof, which are in full-time or intermittent use by the National Guard, or which are being held by the Department of the Army for use by the National Guard.

(3) Installations and activities, or portions thereof, which are in full-time or intermittent use by the Army Reserve or ROTC.

(b) This regulation does not apply to:

(1) Civil Works functions of the Corps of Engineers.

(2) Facilities occupied by Army activities as tenants when real property accountability and control is vested in another military department or government agency, such as the General Services Administration.

§ 656.3 Definitions.

For the purpose of this regulation, the following definitions will apply:

(a) Off-road vehicles (ORV). Any motorized vehicle designed primarily for, or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain, except that such term excludes (1) any registered motorboat, (2) any military, fire, ambulance, or law enforcement vehicle when used for emergency purposes, and any combat or combat support vehicle when used for national defense purposes, and (3) any vehicle whose use is authorized by the Secretary of Defense, or his properly designated representative, for official use under a permit, lease, license, or contract.

(b) Official use. Use by an employee, agency, or designated representative of the Department of Defense or one of its contractors in the course of his employment, or agency representation.

§ 656.4 Objectives.

The objectives of this regulation are to insure that:

(a) The national security requirements related to Army lands are not impaired.

(b) The natural resources and environmental values are protected.

(c) Safety and accident prevention is given a paramount consideration.

(d) Conflicts of land use within and adjacent to the facility are minimized by advance planning and by cooperation with local governments wherever necessary.

(e) Year-round outdoor recreational opportunities are maximized.

§ 656.5 Policies.

(a) As a trustee of public lands, the Army has a responsibility under Pub. L. 91-190 and Pub. L. 88-29 to protect and enhance environmental quality, conserve natural resources, and provide opportunities for outdoor recreation. However, it must be recognized that land under Army control was acquired solely for national defense purposes. Other uses are therefore secondary to mission needs.

(b) All land and water areas will be closed to off-road recreational use by ORV's except those areas and trails which are determined suitable and specifically designated for such under the procedures established in this regulation.

(1) In determining suitability of areas and trails for ORV use, each type of motorized vehicle, ORV, shall be considered separately, taking into account its potential environmental impact, the seasonal nature of its use and opportunities for counterseasonal use with other recreational users.

(2) The characteristics of use of one type of motorized recreational vehicle, ORV, shall not affect or govern regulations on the use of an area or trail by another type of ORV use.

(c) When ORV use is permitted, the intensity, timing, and distribution will be carefully regulated to protect the environmental values. In designating suitable sites, equitable treatment should be given to all forms of outdoor recreational activity and where possible, nonconflicting use shall be encouraged on existing trails. Prior to designating such areas or trails for ORV use, the environmental consequences must be assessed and environmental statements prepared and processed when such assessments indicate that the proposed use will create a significant environmental impact or be environmentally controversial (Pub. L. 91-190 and AR 200-1). This procedure applies to all areas, including areas under consideration which previously have been used by ORV's.

(d) If the installation commander or his designee determines that ORV use is causing or will cause considerable adverse effects on the soil, vegetation, wildlife, wildlife habitat, or cultural or historic resources, he shall immediately prohibit the type of ORV use causing such effects, and if necessary, close such designated sites. Restrictions on ORV use or closure of designated sites shall remain in effect until such adverse effects have been eliminated, including site restoration if necessary, and appropriate measures implemented to prevent any such recurrence.

(e) Persons abusing the ORV use privilege shall be barred, with their vehicles, from access to the Army installation for ORV use. Further action, as appropriate, may be taken under 18 U.S.C. section 1382. Violations of Federal or State laws applicable to Army installations under title 18 U.S.C. (Assimilative Crimes) may be referred to a U.S. Magistrate in accordance with AR 27-40 and AR 190-29.

(f) The limitations imposed by this regulation on off-road travel by ORV's do not apply to official use. It is Army policy to minimize environmental degradation of sensitive portions of facility sites which play a significant ecosystem support role.

§ 656.6 Responsibilities.

Commanders of Army installations and activities in the United States will:

(a) Develop policy and procedures prescribing operating conditions for ORV's which are designed to protect resource values, preserve public health, safety and welfare, and minimize use conflicts. These procedures will include as a minimum:

(1) Registration—ORV's used both on and off the traffic way will be registered in accordance with AR 190-5 and AR 190-5-1. ORV's operated solely off the traffic way may be registered at the discretion of the installation commander.

(2) Fees—Installation commanders are authorized to impose appropriate fees and charges for ORV activities in accordance with AR 28-1, as an element of the Outdoor Recreation Program. Such fees and charges are accounted for as income to nonappropriated funds in accordance with AR 230-65.

(b) Ensure that lands where off-road vehicle use will be permitted are designated in the natural resources management plan and where appropriate include as a part of the installation's master plan (AR 210-20 and AR 420-74).

(c) Provide opportunities for users to participate in the selection and designation of suitable sites and distribute information which identifies authorized sites and describes the conditions of use. Organized recreational activities involving off-road vehicles are within the scope of the Outdoor Recreation Program of Army Recreation Services and should be so established.

(d) Post appropriate signs at authorized areas and trails.

(e) Provide for the administration, enforcement, and policing of trails and areas to ensure that conditions of use are met on a continuing basis.

(f) Establish appropriate procedures to monitor the effects of the use of ORV's and provide for maintenance of the ORV areas of trails. This monitoring will be the basis for changes to installation policy to ensure adequate control of ORV use, amendment of area and trail designations, or conditions of use which are necessary to protect the environment, insure the public safety, and minimize conflict among users.

(g) Negotiate cooperative agreements, when appropriate, with State or local governments for the enforcement of laws and regulations relating to ORV use.

(h) Coordinate ORV use, projects, activities, designated ORV areas, and all related matters, with the installation environmental committee and environmental office.

§ 656.7 Environmental considerations.

The environmental and related impacts of ORV use will be assessed in accordance with AR 200-1. Coordination with adjacent private and public landowners and managers will be included in the assessment process.

§ 656.8 Guidelines and criteria for evaluation and utilization of Army lands for off-road vehicle use.

(a) Designation. (1) Army lands may be designated for one or more types of ORV use in response to a demonstrated need providing there is sufficient suitable area available.

(2) Lands which may not be designated for one or more types of ORV use are:

(i) Areas restricted for security or safety purposes, such as explosive ordnance impact areas.

(ii) Areas containing geological and soil conditions, flora or fauna or other natural characteristics of fragile or unique nature which would be subject to excessive or irreversible damage by use of ORV's

(iii) Areas where the use by a type or types of ORV would cause unequivocal and irreversible damage or destruction as a result of such use; provided, however, that types of ORV not causing such damage or destruction may be permitted to use such areas.

(iv) Areas which are key fish and wildlife habitat as identified under environmental considerations § 656.8(c)(5) of this part.

(v) Areas which contain archeological, historical, petroglyphic, pictographic, or paleontological values; or which constitute de facto wilderness or scenic areas; or in which noise would adversely affect other uses and wildlife resources.

(vi) Areas in or adjacent to outdoor recreation areas where noise or vehicle emissions would be an irritant to users of the outdoor recreation area.

(vii) Noise sensitive areas such as housing, schools, churches or areas where noise or vehicular emissions would be an irritant to inhabitants.

(viii) Areas or trails set aside for horses and their recreational use.

(3) Site designation. Before designating such sites, the capabilities of the ecological factors should first be ascertained in order to determine carrying capacities.

(i) Area designation. Area designation offers a greater freedom of movement and is probably preferred by users over trail designation. However, area designation may result in greater environmental damage and cause conflicts with other uses. Therefore, great care must be exercised in designating suitable sites for area use.

(ii) Trail designation. Restrictions to designated trails probably constitute a compromise for most ORV users. However, this method is more compatible with the objective of this regulation. Therefore, when it is practicable to designate existing or proposed trails for use of ORV's without environmental despoilment, preference should be given to designating these sites. Trails currently used for hiking, bicycling, or horseback riding will not be designated for concurrent ORV use.

(iii) Use classification.

(A) Areas and trails should be classified as:

(*1*) Generally open to public with access controlled within manageable quotas, or

(*2*) Closed to the public.

(B) Where use of ORV's by installation personnel is permitted, exclusions of the public may not be justifiable except under the most compelling conditions.

(b) Zone of use areas and trails shall be located to minimize:

(1) Damage to soil, watershed, vegetation, or other resources of the public lands.

(2) Harassment of wildlife or significant disruption of wildlife habitat.

(3) Conflicts between ORV use and other existing or proposed recreational uses on the same or neighboring lands.

(4) Damage to overhead or underground utility distribution lines.

(c) Environmental Consideration (AR 200-1). Prior to designating areas or trails for use by a type or types of ORV's, consideration will be given to the possible traumatic effects on the environment by each type of ORV. Such considerations should not be limited to the proposed sites to be designated for ORV use. Some factors to consider are the effects of:

(1) Dust from the use of ORV's and emissions from internal combustion engines or air quality.

(2) Siltation in streams or other bodies of water which may result from soil erosion created by ORV's.

(3) Soil erodability and soil compaction.

(4) Impact on native and desirable species of plants with special consideration given to those species listed as threatened or endangered.

(5) Impact or wildlife, their breeding and drumming grounds, winter feeding and yarding area, migration routes, and nesting areas. Also, the effects of such use on the spawning, migration, and feeding habits of fish and other aquatic organisms, with particular attention given to the effects on fish and wildlife species classified as threatened or endangered.

(6) Excessive noise on humans and wildlife.

(7) Potential despoilment of aesthetic values or visual characteristics of the sites.

(d) Operating criteria. (1) Off-road vehicles shall not be operated:

(i) In a reckless, careless or negligent manner;

(ii) In excess of established speed limits;

(iii) While the operator is under the influence of alcohol, harmful drugs, or narcotics. As a condition for the privilege of operating off-road vehicles on Army lands, owners and operators of such consent to submit to a test of their blood, breath, or urine for the purpose of determining the alcoholic content of their blood if cited or lawfully apprehended for any offense allegedly committed while driving or in actual physical control of an off-road vehicle on the installation while under the influence of intoxicating liquor. Failure to submit to or complete such test will result in revocation of the use permit for a period of 6 months (see AR 190-5).

(iv) In a manner likely to cause excessive damage or disturbance of the land, wildlife, or vegetative resources.

(v) From sunset to sunrise without lighted headlights and taillights.

(2) All off-road vehicles must conform to applicable State laws, including those with respect to pollutant emissions, noise and registration requirements.

(3) No persons may operate an ORV on Army lands without a valid operator's license or learner's permit where required by State or Federal law. Unless contrary to State or Federal law, persons under the age required for licensing may operate an ORV on Army lands providing they are at least 10 years of age and are under the direct supervision of an individual 18 years of age or older who has a valid operator's license when required by State or Federal law, and who is responsible for the acts of that person.

(4) No ORV's may operate on Army land unless equipped with brakes in good working condition.

(5) Every ORV shall at all times be equipped with a muffler in good working order which cannot be removed or otherwise altered while the vehicle is being operated on Army lands. To prevent excessive or unusual noise, no person shall use a muffler cutout, bypass, or similar device upon a motor vehicle. A vehicle that produces unusual or excessive noise or visible pollutants is prohibited.

(6) The carrying of firearms or other hunting instruments on any ORV will

be in accordance with applicable State or Federal laws and regulations.

(7) All ORV operators and passengers will be encouraged to wear safety helmets with face shields affixed.

(8) ORV's when operating off established road and parking areas not covered by ice, snow or water shall be equipped with a properly installed spark arrester that meets standard 5100-1a of the U.S. Forest Service, Department of Agriculture. This standard includes the requirements that such spark arrester shall have an efficiency to retain or destroy at least 80 percent of carbon particles, for all flow rates, and that such spark arrester has been warranted by its manufacturer as meeting these efficiency requirements for at least 1,000 hours, subject to normal use, with maintenance and mounting in accordance with the manufacturer's recommendations.

[42 FR 56326, Oct. 25, 1977, as amended at 43 FR 1792, Jan. 12, 1978]

PART 657—FACILITIES ENGINEERING, PEST MANAGEMENT PROGRAM

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AUTHORITY: 10 U.S.C. 3012.

SOURCE: 45 FR 73473, Nov. 5, 1980, unless otherwise noted.

Subpart A—General

§ 657.1 Purpose.

This regulation provides policies, standards, and certain procedures for pest control activities at US Army installations. It sets minimum levels of pest control operations in real property maintenance activities (RPMA). These operations are compatible with national mandates and for protecting the environment.

§ 657.2 Applicability.

(a) This regulation applies to the Army Reserve, the Army National Guard, and to all installations and activities worldwide under control of the DA. Control is by ownership, lease, or similar ways under the following conditions of use:

(1) Installations and activities—

(i) In active use by the Army.

(ii) Held in an inactive or standby condition for future active use by the Army.

(iii) In an excess category. (See AR 405-90, Disposal of Real Estate, for further guidance on excess properties.)

(2) Federally operated installations and activities, or portions thereof, which the National Guard uses full time or part time; or DA is holding them for use by the National Guard.

(3) Installations and activities, or portions thereof, which the Army Re-

serve or ROTC use full time or part time.

(b) This regulation does not apply to—

(1) Civil Works functions of the Corps of Engineers.

(2) Facilities occupied by Army activities as tenants when real property control is under another military department or Government agency, such as the General Services Administration.

(c) Installations outside the United States will comply with this regulation, except if—

(1) Specifically exempt.

(2) In conflict with laws, customs, conditions, or practices of the host country.

§ 657.3 Explanation of terms.

The terms used in this regulation are explained in the Glossary.

§ 657.4 Objectives.

This regulation's objectives are to—

(a) Develop, start, and maintain safe and effective programs for pest control at each Army installation.

(b) Maintain and protect the health, environmental quality, esthetic values, and ecological balance of the military community by—

(1) Protecting real estate investments from depreciation due to pests.

(2) Complying with environmental protection and improvement policies per AR 200-1, Environmental Protection and Enhancement.

(3) Controlling potential disease vectors when needed.

(4) Preventing damage of natural resources by insects or other pests.

(c) Keep and improve operating personnel competence and skill through periodic training and testing.

(d) Prevent medical or economic pests from being introduced or spread into or throughout the United States, its territories, or possessions by Army operations.

Subpart B—Policies

§ 657.11 Supervision.

Except as specifically exempted below and in §§ 657.21, 657.22, and 657.43, only DOD trained and certified personnel will apply the pesticides, or it will be done by others under their direct supervision.

(a) At each Army installation worldwide there should be at least two DOD certified pesticide applicators performing pest control. Sometimes this requirement may be relaxed, e.g., tenant activities, overseas, contractual arrangements, and base closures. Send requests for exception with justification to HQDA (DAEN-MPO-B), Washington, D.C. 20314.

(b) All personnel will be trained and certified in accordance with the DOD Plan for Certification of Pesticide applicators who—

(1) Perform pest management activities at least 25% of their on-duty time;

(2) Apply restricted-use pesticide.

(c) Part-time pesticide applicators (less than 25% on-duty time) who do not use restricted-use pesticides will be trained in—

(1) The safe, efficient, and environmentally sound use of pesticides.

(2) Other integrated pest management (IPM) methods.

§ 657.12 Operations.

(a) Installations will use IPM techniques in their pest management programs as much as possible.

(b) Installation pest management activities will be scheduled to—

(1) Assure effective preventive and corrective measures.

(2) Ensure that surveillance and control activities prevent excessive pest populations from developing.

(3) Minimize the impact on the environment.

(c) Installations will make preventive pesticide applications only when pests are expected or a practical schedule for IPM cannot be made.

§ 657.13 Materials and equipment.

(a) Pesticides and equipment in the Federal Supply Catalogs, DOD section, will normally be used. Microfiche of catalogs C6800IL and 3740/50IL are available from Cdr, US Army Adjutant General Publications Center, 1655 Woodson Road, St. Louis, MO 63114. Use of a pesticide other than those registered by the Environmental Protection Agency (EPA) or states and approved for specific application per the label is not authorized. Direct requests to use pesticides according to specific public health and quarantine exemptions or experimental use permits through the MACOM professional pest management personnel (MPPMP) to HQDA(DAEN-MPO-B) for review and appropriate action. Pesticides that have been suspended or cancelled by EPA will only be used per the suspension or cancellation order and will not be used after the date indicated on the order. To avoid having cancelled or suspended materials on hand, limit purchases to that which can be used within 90 days.

(b) Appropriate MPPMP will review and approve proposed projects before acquiring or applying—

(1) Nonstandard pesticides and pest control equipment.

(2) State-registered pesticides.

(c) Alternate pesticides (standard or nonstandard) which do not meet contract specifications must be approved by MPPMP.

(d) Send requisitions for all nonstandard and state-registered pesticides to the MACOM for review and written approval. Agencies or commands without access to MPPMP support may obtain requisition review service from HQDA(DAEN-MPO-B), WASH, DC 20314.

(1) Pesticide requisitions must—

(i) Have data about the target pest.

(ii) Describe the area to be treated.

(iii) Give the extent of the area to be treated.

(iv) Give the rate of application.

(v) Give the name and certification number of the applicator.

(vi) Justify the pesticide's use.

(2) On the requisition's written approval by the proper MPPMP, nonstandard pesticides may be purchased locally.

(e) Equipment listings are contained in TM 5-632. Procurement criteria are in AR 420-17. Information about new developments in equipment is available from the MPPMP.

§ 657.14 Training and certification.

(a) All pesticide applicators who determine the effectiveness or selection and application of pest control on Army real property must be periodically trained and examined. Training for first certification and recertification will be done under the DOD Plan for Certification of Pesticide Applicators.

(1) Prerequisites for attending the training courses include—

(i) A term (MPPMP approved) of successful on-the-job training.

(ii) Successful completion of the correspondence course, Basic Pest Control Technology, NTTC Course 150. This course is conducted by the Navy Public Works Center, Norfolk, VA 23511. The MPPMP must approve the applications for this course.

(2) CONUS installation (includes Hawaii and Alaska) pesticide applicators will be trained in specific courses given at—

(i) US Army Health Services Command, Ft Sam Houston, TX.

(ii) US Air Force at Sheppard Air Force Base, TX.

(iii) US Navy at Jacksonville Naval Air Station, FL.

(iv) Naval Air Station, Alameda, CA.

(3) All pesticide applicators who are candidates for their first certification must successfully complete the core phase and the special categories of training desired at one of the training facilities indicated above.

(4) Obtain quotas for the US Army Health Services Command training from the US Army Medical Department Personnel Support Agency, ATTN: SGPE-ED, WASH, DC 20324. Contact this office by calling AUTOVON 223-5358 or 223-5559. Personnel using pesticides should keep abreast of developments by attending local and state training sessions and trade and professional meetings.

(5) Training of pesticide applicators at oversea installations will follow the DOD Plan for Certification of Pesticide Applicators, except as follows:

(i) The Medical Command (MEDCOM) or MACOM professional pest control personnel will do the training.

(ii) Personnel must be trained to apply pesticides according to the host country's laws when they differ from United States laws. The more restrictive law for use and disposition of pesticides will be followed.

(b) Training will be available in the following categories:

(1) Agricultural pest control (animal).

(2) Forest pest control.

(3) Ornamental and turf.

(4) Aquatic.

(5) Rights-of-way.

(6) Industrial, institutional, structural, and health related.

(7) Public health.

(8) Demonstration and research.

(c) A DD Form 1826 (Certificate of Competency) will be issued to those who meet the required competency levels, and, as recommended by MPPMP, for the appropriate categories. Certificate of Competency will be valid for not more than 3 years. Recertification will require refresher training, written test, and reassessing on-the-job competency. DD Form 1826 is available from the OCE Publications Depot, 890 South Pickett Street, Alexandria, VA 22301.

(d) Supervisors and certified applicators will train new hires on the job. MPPMP may assist in training during technical visits and in special MACOM-sponsored training sessions.

§ 657.15 Environmental quality.

Pest control will be planned and conducted to minimize or eliminate adverse environmental effects. If required, prepare and process draft documents and final environmental impact statements on time per AR 200-1.

§ 657.16 Nonappropriated fund activities.

Only trained and certified personnel or those under their direct supervision will apply pesticides at nonappropriated fund activities. (See § 657.11.) Contracts for pest control at nonappropriated fund activities will be governed by this regulation.

§ 657.17 Property leased to the Government.

(a) CONUS and overseas.

(1) Lease instruments will be negotiated to note the responsibilities of the lessor and of the lessee (Government) for accomplishing pest control. In foreign countries, these responsibilities will be predicated on custom, condition, and practices of the country concerned.

(2) Occupants will keep the leased premises clean and sanitary.

(b) *CONUS* (includes Alaska and Hawaii). Where feasible, the lessor will—

(1) Furnish and keep the leased housing free of pest infestation (AR 420-71 leased premises).

(2) Use controls and pesticides that conform to Federal, state, and local regulations for facilities under DA control.

§ 657.18 Cooperation with other agencies.

(a) *General.* Specialists of other Federal agencies assist with problems of medical, agricultural, and environmental importance (e.g., disease and pest control, quarantine control, customs inspection, fish and wildlife protection, water protection) as requested. The installation commander will ask the appropriate MACOM commander for these services. These agencies include the—

(1) US Department of Health and Human Services (Public Health Service).

(2) US Department of Agriculture (plant protection, quarantine, and veterinary services of the animal and plant health inspection services).

(3) US Department of the Interior (Fish and Wildlife Service).

(4) US Treasury Department (Bureau of Customs).

(5) Environmental Protection Agency (Office of Pesticide Programs).

(b) *Coordination.* Installations will coordinate environmental assessments of outdoor applications of pesticides with departments and agencies in paragraph (a) of this section. This coordination will be requested through the MACOM to the appropriate agency. Requirements for Environmental Impact Assessments (EIA) or Environmental Impact Statements (EIS) for certain application of pesticides are provided in AR 200-1.

(c) *Notification.* Installations will notify MACOM's of proposed visits or surveys by representatives of organizations in paragraph (a) of this section when these visits or surveys relate to quarantine or to past or proposed pesticide use.

§ 657.19 Quarantine.

(a) In accordance with AR 700-93 Prossessing and Shipping DOD Sponsored Retrograde Materiel Destined for Shipment to the United States, its Territories, Trusts, and Possessions, and AR 40-12, Medical and Agricultural Foreign and Domestic Quarantine Regulations for vessels, aircraft, and other transports of the Armed Forces, all command levels will cooperate fully with Government agencies responsible for quarantines of agricultural and public health significance.

(b) MACOM commanders will ensure that areas to receive pesticide treatment are limited to the minimum needed to meet quarantine requirements.

(c) Installations will procure pesticides, equipment, and other materials needed to comply with quarantine requirements.

§ 657.20 Aerial application of pesticides.

Applying pesticides by air will be done per AR 40-574, calibration procedure for multimeters AN/PSM-6, AN/PSM-6A, Pesticides. Prepare an EIA before aerial application, followed by an EIS, if needed.

§ 657.21 Outleased property.

Outgrant holders must comply with all pesticide and animal damage control laws, ordinances, specifications, and rules in land use regulations that are part of the outgrant document. Before starting any compliance program that deviates from the land use regulations, get the MACOM to review and approve details of the program. Where possible, supplemental agreement to existing outgrants, renewed or amended, will make provisions for compliance requirements stated above. (See AR 420-74, Natural Resources; Land, Forest, and Wildlife Management).

§ 657.22 Contractual pest management.

(a) Decisions made on in-house versus contract must agree with current DA Commercial and Industrial Type Activities (CITA) directives. (See § 657.43 for augmentation contracts.)

(b) Installations in states that give pesticide training, regulation, and certification programs having final approval by EPA will decide on contract or in-house method per effective CITA directives. State certification is accepted for competency. DOD certification is not needed.

(c) MPPMP will review and approve technical provisions of all proposed contracts. Commander-in-Chief, US Army Europe, US Army Japan, and Eighth US Army may delegate this approval.

(d) Personnel with a current DD Form 1826 covering categories in the contract will review all pest control contracts. The review must assure contractual work is in accord with contract specifications. Review will include, but not be limited to—

(1) On-site inspection of unopened pesticide containers to verify that the chemical listed on the label—

(i) Meet contract specifications.

(ii) Can be applied in accordance with the registered use.

(2) Watching—

(i) Mixing and equipment operations.

(ii) Rate of application (volume versus area).

(iii) To detect environmental hazards.

(iv) Safety precautions.

(e) Copies of each contract awarded and the cost comparison pertaining to the contract will be given the MPPMP.

Subpart C—Responsibilities

§ 657.31 MACOM Commanders.

MACOM commanders will provide command and technical supervision of the pest management program at installations under their command. They will have enough PPMP to assure that all areas of pest management have professional direction. Small MACOM's without justification for MPPMP will obtain an intraservice support agreement with a MACOM that is appropriately staffed. MPPMP serving on the engineer staff will—

(a) Advise on all aspects of pest management operations. Included are—

(1) Manpower requirements.

(2) Operational needs.

(3) Minimizing pesticidal environmental impact.

(4) Training and certifying pest control personnel.

(5) Procedural needs to assure efficient pest control programs.

(b) Coordinate with other agencies to implement environmentally safe and efficient pest control programs.

(c) Coordinate with Army medical authorities to implement their responsibilities as given in AR 40-5.

(d) Review and provide written approval to user of—

(1) Nonstandard pesticides.

(2) State-registered pesticides.

(3) All equipment prior to procurement, as indicated in § 657.13.

(e) Ensure that—

(1) Annual on-site reviews of installation pest management and surveillance activities are done by PPMP.

(2) Recommendations that would result in safer, more economical, and more effective operations are made to facilities engineers.

(3) MACOM requirements for Army Medical Department (AMEDD) PPMP help in providing on-site reviews of installation pest management and surveillance programs will be coordinated with US Army Health Services Command. Guidance for conducting program reviews is provided in Appendix § 657.51.

(f) Maintain professional proficiency by—

(1) Attending professional meetings.

(2) Keeping abreast of new developments reported in professional publications.

(g) Assist in providing on-the-job training for installation pest control personnel to—

(1) Select, use, and maintain pest control equipment.

(2) Select, prepare, and apply pesticides.

(3) Report accurately the usage of these materials.

(h) Maintain record of training and certification status of pesticide applicators and check their activities to determine competence.

(i) Certify pest management personnel in accordance with the DOD Training and Certification Plan.

(j) Review and approve technical provisions of all pest management contracts prior to solicitation of bids.

(k) Provide technical review of all military construction, modification, and repair projects to assure structural pest control requirements are included.

§ 657.32 Installation commanders.

Installation commanders will—

(a) Determine an installation's position and responsibilities in community-wide pest control regarding quarantine and epidemics.

(b) Maintain liaison with MACOM's about pest surveys and investigations proposed by other agencies.

(c) Establish lessee responsibility for using pesticides on outgrants of military real property.

(d) Initiate requests for aerial spraying of pesticides as prescribed in AR 40-574.

(e) Designate a pest management coordinator for all installation pest management activities.

(f) Approve and support the installation's pest management program formulated by the facilities engineer and the installation surgeon and approved by the MPPMP.

§ 657.33 Facilities engineers.

Installation facilities engineers will—

(a) Develop a comprehensive written pest management plan for the installation following the guidance in TM 5-632, chapter 2, section 3, and this regulation.

(b) Supervise and direct pest management operations.

(c) Conduct preventive maintenance and surveillance inspections at timely intervals.

(d) Ensure that operating personnel receive adequate training to achieve required certification.

(e) Provide on-the-job training of new operating personnel.

(f) Obtain and maintain adequate supplies of materials and equipment.

(g) Assure all pest management operations are done safely.

(h) Decide the phases of pest control to be done by contract, based on existing policies. Included are—

(1) Preparing needed specifications and technical provisions for the contract.

(2) Arranging for the purchasing and contracting (P&C) officer to obtain contract services.

(3) Assuring that contract operations are done per specifications through continuous inspection by personnel holding a valid Certificate of Competency.

(i) Perform all recordkeeping and reporting requirements of this regulation.

(j) Inform heads of nonappropriated fund activities—

(1) That applying restricted-use pesticides at these activities will be done by, or under the direct supervision of, trained and certified personnel.

(2) Where certification training is given.

(k) Assure that pest control services are conducted so as to minimize any adverse effects on the environment.

(l) Cooperate with the installation medical authority by—

(1) Furnishing and maintaining mosquito light traps.

(2) Performing essential pest control operations indicated by results of surveillance of medical and quarantine pests.

(3) Providing all needs to meet health safety criteria, including shops, equipment, and protective gear.

(m) Maintain records of operations (e.g., investigations, inspections, manpower use, funds, and pesticides) for analyzing efficiency and economy and evaluating pest control.

§ 657.34 Surgeon general.

The medical authority (State Adjutant General for the National Guard Bureau) serving the installation will—

(a) Conduct surveillance of pest populations involved in the health of the command and those involved in US Department of Agriculture quarantine regulations. The medical authority will give the facilities engineer the results of the survey activities.

(b) Conduct the installation pesticide monitoring program.

(c) Obtain timely identification and susceptibility status of pests to pesticides as necessary. Furnish this information to facilities engineers to be incorporated into pest control operations.

(d) Establish health and personnel safety criteria for pesticide operations.

(e) Assist the engineer MPPMP to conduct annual on-site installation pest management program reviews. (See Appendix 657.51.)

(f) Provide the certification training of pesticide applicators in accordance with the DOD plan.

§ 657.35 Building occupants.

Occupants of buildings, including Army family housing, will—

(a) Apply good sanitation practices to prevent pest infestations.

(b) Apply only those pesticides approved for use by building occupants.

(c) Cooperate fully with installation pest control personnel in scheduling major operations, to include preparing the areas to be treated.

(d) Obtain, through command channels, MPPMP approval before using any contract pest control services.

§ 657.36 Pest managment coordinator.

The coordinator will be aware of all pesticide applications on the installation and will assure that—

(a) All pesticide applications are recorded and reported according to this regulation.

(b) All personnel responsible for accomplishing pest management activities know the policies and procedures in this regulation.

Subpart D—Procedures

§ 657.41 Pesticide handling.

(a) *General.* (1) Handle pesticides in accordance with AR 200-1 and appropriate Federal regulations (29 CFR 1910 and 40 CFR 165.10). Assign vehicles with lockable storage suitable for safe transportation of pesticides, personnel, and supplies for control operations. Do not use these vehicles for other purposes. Do not transport pesticides in the cabs of vehicles.

(2) Maintain an accident prevention and environmental protection program within the installation pest management program area.

(b) *Safety.* Current recommendations for design and construction criteria for pesticide mixing or storage facilities and the use of protective devices and clothing is available from the MPPMP and the US Army Environmental Hygiene Agency (USAEHA). Masks, respirators, gloves, and protective clothing will be provided, as required (AR 385-32 and TB Med 223). Pesticide-contaminated clothing will not be home laundered; it will be laundered at Government expense. Dispose of clothing contaminated so severely as to produce an imminent health hazard. For pesticide poisoning, see the installation's surgeon or nearest available doctor. Get added information by calling the local poison control center or USAEHA Pesticide Hotline (AUTOVON 584-3773).

(c) *Pesticide spills.* Report all pesticide spills in accordance with the installation's National Oil and Hazardous Pollution Contingency Plan. If not covered in the plan, notify the installation surgeon, safety officer, fire marshal, state and local authorities, and the appropriate MPPMP. Get added help by calling USAEHA Hazardous Substance Spill Response Team during USAEHA duty hours: Commercial (301) 671-3816 or AUTOVON 584-3816. During USAEHA non-duty hours, Commercial (301) 671-4375 or AUTOVON 584-4375.

(d) *Pesticide storage.* Inspect stored pesticides monthly to determine condition of containers and if shelf life is near or has passed. Maintain inventory of stored pesticides continuously. Certified personnel and safety and fire prevention officers will inspect and record findings.

§ 657.42 Pesticide disposal.

(a) *General.* The installation will not store or dispose of pesticides collected by the civilian community.

(b) *Disposal.* Use serviceable excess pesticides locally for the purpose originally intended, if permitted; report them to the local Defense Property Disposal Office (DPDO); or dispose of them as appropriate. Allowed disposal methods will vary from one place to another, based on available approved pesticide incinerators and designated landfills. Consult the MPPMP on proper disposal procedures. Ask the USAEHA Solid Waste Division for guidance. In oversea areas, follow local laws and Status of Forces Agreements regarding pesticide disposal. Maintain records locally on any pesticide disposal. Rare exceptions to the following prohibited procedures may be granted by the regional administrator of EPA.

(1) Do not dispose of any pesticide, its waste, its container, or residue from its container in a way as to cause or allow—

(i) Open dumping.

(ii) Water dumping.

(iii) Well injection.

(iv) Direct exposure that may cause contamination of food or feed supplies, or a manner inconsistent with its label or labeling.

(2) Do not dispose of any pesticide, its waste, its container, or residue from its container in a way inconsistent with its label as to cause or allow open burning. However, in an open field, the applicator may burn small amounts of combustible containers, not more than 50 pounds or the amount used in a single work day, whichever is less (except those formerly containing organic berylium, selenium, mercury, lead, cadmium, or arsenic compounds). Before burning, consider the following:

(i) Wind direction in relation to receptors such as population centers, field workers, domestic animals, and surface water supplies.

(ii) Burn in accord with Federal, state, or local ordinances.

(iii) Avoid contamination of surface and ground water to levels in excess of Public Health Service standards, US Department of Health and Human Services, for potable water.

(c) *Repacking.* Transfer pesticides in deteriorated containers to approved clean containers that are lined to protect against chemical reaction. Do not place different formulations of the same pesticide in the same container.

(1) Label replacement containers to include—

(i) The name and strength of the pesticide formulation.

(ii) The registration number.

(iii) Other pertinent manufacturing data (e.g., log number, date of manufacture, and expiration date) from the original label (40 CFR 162.4-162.7).

(2) Serviceable repackaged pesticides should be managed as described for serviceable excess pesticides. (See (b)

above.) Details on repackaging are found in AR 200-1.

§ 657.43 Augmentation contracts.

(a) Contracts for supplementing in-house pest management activities will be executed, when required, according to existing procurement regulations and the following guidelines:

(1) The services are economically beneficial to the Government and certified contractors are available.

(2) Application by trained and certified facilities engineering personnel is not feasible because of remote location, project size, or manpower, time, and equipment limitations.

(b) Examples of augmentation pest management contracts include—

(1) Single applications of fumigants for entire building or other large enclosure.

(2) Aerial or special equipment applications over large areas such as mosquito breeding areas.

(3) Wood treatment projects, such as groundline treatment of utility poles.

(4) Extensive termite control.

(5) Other operations which facilities engineering personnel cannot do with in-house resources.

(c) The facilities engineering office, in cooperation with the installation medical authority, will prepare technical requirements for all pest management contracts. The facilities engineer will send project plans and specifications to the appropriate MACOM for review and approval. This approval must be obtained before a request is made for getting the service from commercial sources. Include information on the status of EPA's approval of state plans for training and certifying commercial applicators.

(d) Technical provisions will specify only the pesticides approved by the MPPMP and registered by EPA. Identify the items used by the contractor by quality and quantity.

(e) The contractor must submit proof that the supervisory and applicator personnel to be employed on the contract will—

(1) Meet the state certification standards set in response to EPA's implementation of FIFRA or competency requirements set by HQDA (DAEN-MPO-B) in those States that do not meet FIFRA certification requirements.

(2) Provide safe working conditions for personnel and installation occupants.

(f) Inspect the contract per § 657.22 (d).

§ 657.44 Records and reporting requirements.

(a) Maintain adequate records of all pest control operations. The records will be a reference for monitoring and managing pest control operations.

(b) All installations will maintain daily records of pest management activities on DD Form 1532 (Pest Control Report) or other similar formats. Included are the data required by the MACOM for the pest control report. These records will be retained at least 2 years.

(c) Use DD Form 1532 to report all pesticide and pest control information required by part I of the form. Part II will not be reported. The recordkeeping and reporting requirements have been assigned Report Control Symbol DD-M (A&AR) 1080. DD Form 1532 may be requisitioned through normal publications supply channels.

(1) Each installation and subinstallation performing pest management will submit the reports monthly or in accordance with MACOM requirements. Copies will be distributed according to instructions on the back of DD Form 1532 and to—

(i) The appropriate MPPMP.

(ii) The installation doctor.

(iii) The USAEHA, Aberdeen Proving Ground, MD 21010.

(iv) The appropriate medical entomologist at USAEHA Regional Divisions, within 15 days after the report period.

(2) These reports will include all pest control operations conducted by—

(i) The facilities engineer.

(ii) Contractors.

(iii) Government owned, contractor-operated (GOCO) activities.

(iv) Nonappropriated fund activities.

(v) All outgrant lease holders.

(d) Installations will prepare a report annually of anticipated installation pest management programs or projects that—

(1) Use a restricted-use pesticide.

(2) Use any pesticide that could reasonably be expected to significantly contaminate surface or ground water.

(3) Involve 640 or more contiguous acres (1 square mile) being treated as one application.

(4) Involve applying a pesticide by aircraft.

(5) Affect endangered species.

(e) The annual report will describe all anticipated appropriate programs for 1 April through 31 March. Report Control Symbol DD-M(A&AR)1080 has also been assigned to this reporting requirement. Submit reports to HQDA (DAEN-MPO), Washington, DC, 20314 by 1 December preceding the period of planned use. The format at Appendix B will be used in making this report. Include details about the—

(1) Objective of the program.

(2) Target pest.

(3) Pesticide.

(4) Application procedures.

(5) Description of the area.

(6) Sensitive areas or issues.

(7) Any remarks helpful in reviewing the program.

Subpart E—Appendix

§ 657.51 Guidelines for reviewing pest management program.

(a) The following guidelines will—

(1) Aid PPMP's with the annual onsite program review at all major Army installations.

(2) Get maximum use of all PPMP's (MACOM and USAEHA) working on program reviews.

(3) Obtain maximum benefits from program reviews.

(b) The following will be accomplished:

(1) Before the start of each fiscal year, the MACOM will decide priorities for installation programs needing review.

(2) This priority listing will be coordinated with pest management program reviews planned by USAEHA.

(3) As determined by specific problems or activities at the installation, program reviews by both the MACOM and USAEHA during the same 12-month period will be avoided.

(4) Before reviewing a program, the agency conducting the review (MACOM or USAEHA) will contact the other agency to determine any problem areas to be covered.

(5) When the annual on-site review is performed by personnel from a single professional interest (e.g., entomology), coordinate with other MACOM/USAEHA professionals (e.g., agronomists, foresters, biologists) to assure all aspects of the total program are reviewed. Prepare a checklist before each review of known problem areas and special interest items.

(6) The agency (MACOM/USAEHA) reviewing a program will provide a copy of its report to the other agency for information and action.

(7) When deficiencies in a pest management program are noted, the agency responsible (MACOM engineer/surgeon) will correct the deficiency and provide a followup report within 120 days to other concerned agencies (MACOM/USAEHA).

§ 657.52 Format for special planned pesticide usage report.

(a) Location (include state and county).

(b) Project number (if applicable).

(c) Objective.

(1) Target pest.

(2) Purpose (examples: health and morale, wood protection, water management, weed control, protection of ornamental and turf, quarantine).

(d) Pesticide.

(1) Common name.

(2) Formulation.

(3) Concentrations of active ingredient (percent by weight or volume, or lbs/gal).

(4) Standard/nonstandard (include a sample label).

(5) EPA Registration No.

(e) Application.

(1) Form applied (dust, emulsion, gas, etc.).

(2) Use strength (percent) or dilution rate.

(3) Diluent.

(4) Rate (lbs per acre, etc.).

(5) Method (aerial, ground, manual, etc.).

(6) Area.

(i) Acres or other unit to be treated.

(ii) Number of applications.

(iii) Frequency of application to same sites.

(iv) Number of sites/application to occur.

(v) Specific identity of each site.

(7) Months of year pesticide application to occur.

(f) Sensitive areas.

(1) Areas to be avoided (crop lands, lakes, streams, endangered species habitat, etc.).

(2) Areas to be treated with caution (specific identity of each site to include state and county).

(g) Remarks (includes, but not limited to, precautions to be taken, nonchemical alternatives considered, state and local coordination, other pesticides being applied to same sites, and whether treatment is to be done with in-house resources or by contract).

Subpart F—Glossary

§ 657.61 Glossary.

(a) *Certification.* A pesticide applicator's competency must be certified by designated MACOM professionals and installation officials under the DOD Plan for Certification of Pesticide Applicators. The designated professional recommends a Certification of Competency (DD Form 1826) be issued to qualified candidates. Upon approval by the installation commander, certification is complete.

(b) *Certification Categories.* Ten primary categories of certification training have been set by mandate (40 CFR 171.3) as special training requirements in addition to basic training. Eight of these categories are in the DOD certification plan. They apply to the variable conditions encountered in DA pest control operations. These include—

(1) Agricultural Pest Control (Animals).

(2) Forest Pest Control.

(3) Ornamental and Turf.

(4) Aquatic.

(5) Rights-of-Way.

(6) Industrial, Institutional, Structural, and Health Related.

(7) Public Health.

(8) Demonstration and Research.

(c) *Integrated Pest Management (IPM).* Combining control techniques to prevent, eliminate, and suppress pests.

(d) *MACOM Professional Pest Management Personnel (MPPMP).* Professional pest management personnel working in RPMA on the major Army command (MACOM) staff of the engineer and medical entomologist assigned to the engineer or surgeon.

(e) *Nonstandard Pesticides and Equipment.* Includes all pesticides and equipment not listed in the DLA catalog as standard items. These items can be purchased locally after the MPPMP has given written approval.

(f) *Operating Personnel.*

(1) Certified personnel who have been trained under the DOD Plan for Certification of Pesticide Applicators and have been issued a DD Form 1826.

(2) Trainee personnel who operate under the direct supervision of a certified person.

(3) Part-time pesticide applicators as defined in § 657.11(c).

(g) *Pest Management.* Pest control or prevention considering—

(1) Suppression techniques.

(2) The pests' habitat.

(3) Interrelationships between the pests and the ecosystem.

(h) *Pesticide Classification.* Pesticide categories based on toxicity and use patterns for general or restricted use by the US Environmental Protection Agency (EPA) under Pub. L. 92-516.

(i) *Pesticides.* Substances and combinations of substances to prevent, destroy, repel, or mitigate pests. Also, substances and mixtures used as plant regulators, defoliants, or desiccants.

(j) *Pests.*

(1) Those land or aquatic organisms that—

(i) Adversely affect the health and welfare of man and animals;

(ii) Attack military real property, stored supplies, or equipment; or

(iii) Are otherwise undesirable by their presence.

(2) These pests include, but are not limited to arthropods, birds, rodents, nematodes, fungi, bacteria, viruses, algae, snails, marine borers, snakes, and weeds.

(3) Excluded are viruses, bacteria, and fungi normally living on or in human or other living animals.

(k) *Professional Pest Management Personnel (PPMP).*

(1) Military officers or civilian employees of DOD or its components—

(i) With a college degree in a biological or agricultural science, such as agronomy, entomology, forestry, or wildlife biology.

(ii) In a current assignment that includes pest management responsibilities on a regular basis.

(2) Civilian personnel also must meet the minimum requirements of governing Office of Personnel Management qualification standards.

(3) PPMP should have at least 2 years' professional experience.

(l) *Registered Pesticide.* A pesticide that the EPA administrator or EPA-approved states have registered per 7 USC 135.

(m) *Restricted-Use Pesticide.* A pesticide that the EPA administrator determines per 7 USC 135 that, when applied according to directions, without added restrictions, it may cause unreasonable adverse effects on the environment or injure the applicator.

(n) *Standard Pesticides and Equipment.* Pesticides and equipment, standardized, purchased, and stocked as items proven best for use at defense installations. Includes only EPA-registered pesticides and equipment which—

(1) Are rated and approved for standardization by the Armed Forces Pest Management Board.

(2) Have a national stock number (NSN).

(3) Are listed in the Defense Logistics Agency (DLA) catalog.

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(c) removed; (k), (l), and (r) revised; final	51578
651.22 (a)(3), (4), and (6) revised; interim	43690
(a)(3), (4), and (6) revised; final	51578
651.23 (a)(5) revised; (c) and (d) amended; interim	43690
(a)(5) revised; (c) and (d) amended; final	51578
651.27 Introductory text revised; (e) and (h) amended; interim	43690
Introductory text revised; (e) and (h) amended; final	51578
651.28 (b) revised; interim	43690
(b) revised; final	51578
651.30 (a) and (d)(1) amended; (d)(2), (g), and (i) revised; interim	43690
(a) and (d)(1) amended; (d)(2), (g), and (i) revised; final	51578
651.31a Added; interim	43691
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651.33 (b)(1)(vi)(B) revised; (b)(2)(i) amended; interim	43691
(b)(1)(vi)(B) revised; (b)(2)(i) amended; final	51579
651.40 (a) revised; (c) removed; interim	43691
(a) revised; (c) removed; final	51579
651 Appendices A and B amended; interim	43691
Appendixes A and B amended; final	51579

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632 Added	17074
634 Added; interim	28252
634 Revised	39919

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